

1986

Broadbent Real Estate v. Estate of Doran Hunt : Brief of Appellant

Utah Court of Appeals

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Recommended Citation

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BRIEF

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DOCKET NO. 860352 - CA

IN THE UTAH COURT OF APPEALS

BARNUM BROADBENT REAL ESTATE
COMPANY, a Dissolved Partnership,

Plaintiff/Appellant,

vs.

THE ESTATE OF DORAN HUNT, by
and through its Co-Personal
Representatives, DORAN RAY HUNT
and JOAN HUNT RALSTON, and
HUNT DEVELOPMENT COMPANY,
a Corporation,

Defendants/Respondents.

Case No. 860352-CA

Priority No. 14 b.

BRIEF OF APPELLANT
AN APPEAL FROM A FINAL ORDER OF JUDGMENT
FOLLOWING A NON-JURY TRIAL IN THE THIRD
JUDICIAL DISTRICT COURT, IN AND FOR
TOOELE COUNTY, STATE OF UTAH,
THE HONORABLE JOHN A. ROKICH, JUDGE PRESIDING

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JURISDICTION

Court of Appeals

The Plaintiff/Appellant, BARNUM BROADBENT REAL ESTATE COMPANY, a Dissolved Partnership, herewith represents to the Utah Court of Appeals that jurisdiction lies with this Court pursuant to the following Statutes:

This is an appeal from a final judgment following a bench trial held in the Third Judicial District Court for the County of Tooele, State of Utah.

Pursuant to Rule 3(a) of the Rules of the Utah Court of Appeals, "an appeal may be taken from the final orders and judgments of a district court....to the Court of Appeals, by filing a notice of appeal with the clerk of the particular court from which the appeal is taken within the time allowed by Rule 4."

This was accomplished in this case.

In actuality, this appeal was first filed with the Utah Supreme Court, and pursuant to Rule 4(a) the Supreme Court elected to transfer this case to the Court of Appeals.

Since the Supreme Court elected to transfer this matter to the Utah Court of Appeals, and since Rule 3(a) gives the Court of Appeals jurisdiction over this particular appeal, Plaintiff/Appellant believes this Court maintains the proper jurisdiction to hear this appeal.

IN THE UTAH COURT OF APPEALS

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STATEMENT OF THE NATURE OF THE CASE

This is an appeal filed November 12, 1986 from a judgment signed July 14, 1986 but not entered by the Clerk of the Court until October 20, 1986 on a claim for a real estate commission due, finding "No Cause of Action," in favor of the Defendants/Respondents, The Estate of Doran Hunt and Hunt Development Company, and against the Plaintiff/Appellant, Barnum-Broadbent Real Estate Company, a dissolved partnership, in the Third Judicial District Court in and for Tooele County, State of Utah, heard at bench trial by the Honorable John A. Rokich, presiding.

PARTIES AND DISPOSITION IN THE LOWER COURT

The original parties to this action were the Barnum Broadbent Real Estate Company as Plaintiff/Appellant, and The Estate of Doran Hunt and Hunt Development Company as Defendants/Respondents. Gary Larson, a real estate agent for Barnum Broadbent Real Estate Company, appeared as a Plaintiff-in-Intervention. Mr. Larson has elected not to appeal the decision of Judge Rokich.

On February 11, 1986, a non-jury trial was held before the Honorable John A. Rokich, Third District Court Judge, and the Court's Amended Findings of Fact, Conclusions

of Law and Judgment were finally entered by the Clerk of the Court on October 20, 1986 (R. 00509) On plaintiff's complaint for attorney a real estate commission due, the trial judge found in favor of the defendants and against the plaintiff and the plaintiff-in-intervention on plaintiff's complaint, "no cause of action". (R. 00508)

On defendants' claim for attorney fees in defending this action, the trial judge found in favor of the plaintiff and the plaintiff-in-intervention and against the defendants on defendants' counterclaim, "no cause of action."

RELIEF SOUGHT ON APPEAL

The Plaintiff/Appellant, Barnum Broadbent Real Estate Company, a dissolved partnership, seeks a finding by this Honorable Court that the trial judge in this case misapprehended the law to the facts of this case on whether a real estate commission is due, and seeks an order of remand, sending the case back to the trial court for findings consistent with the applicable law as it relates to the facts presented at trial.

STATEMENT OF ISSUES PRESENTED ON APPEAL

1. Whether there was a valid and binding Earnest Money Receipt and Offer to Purchase executed by the Seller, Doran Hunt and/or Hunt Development Company, and the Buyer, Groover-Hoffman, Inc., which was, once signed, enforceable at law.

2. Whether the Seller, Doran Hunt and/or Hunt Development Company is estopped to deny that the Real Estate Broker is entitled to its real estate commission, when (a) the Seller enters into a valid and binding earnest money agreement with the buyer to sell the real estate in question, and (b) the Seller frustrates the Buyer's attempts to close the deal.

3. Whether the Seller, Doran Hunt and/or Hunt Development Company waives the right to assert that deny the Broker is not entitled to a real estate commission until the sale is consummated, when he first signs the earnest money agreement and then frustrates the Buyer's efforts to close.

4. Whether the Broker is entitled to a commission when the Seller and the Buyer subsequently mutually agree to rescind the Earnest Money Receipt and Offer to Purchase.

STATEMENT OF FACTS

In 1979, the Defendant/Respondent, Hunt Development Company, Inc. owned the Grandview Mobile Home Park in Rock Springs, Wyoming and Doran Hunt owned certain trailers and other personal property in the park. (Findings of Fact, R. 00497)

In October of 1979, Doran Hunt, then President of Hunt Development Company, decided to sell the mobile home park, and had prepared a "Sales Proposal" which provided that the park would be sold for \$3,250,000.00 with a down payment of \$600,000.00 and the balance to be paid pursuant

to a 20-year contract bearing interest at 12% interest. Certain trailers belonging to Doran Hunt and other personal property were also offered for sale at a price to be negotiated between the buyer and the seller. (Findings of Fact, R. 00497)

In October, 1979 Gary Larson, a licensed real estate agent for the Plaintiff/Appellant, Barnum Broadbent Real Estate Company, obtained a copy of the "Sales Proposal", and based upon the recommendation of a social acquaintance, presented it to Larry Groover, the President of Groover-Hoffman, Inc. (Findings of Fact, R. 00493)

Larry Groover advised Gary Larson that he had an interest in making an offer on the mobile home park of Hunt Development together with the personal property, that he was capable of making the purchase through his company with the aid of subscriptions by other private investors. (Findings of Fact, R. 00496)

Gary Larson then contacted Doran Hunt and obtained a non-exclusive listing agreement on the park on November 2, 1979. (Findings of Fact, R. 00496)

On November 9, 1979 Gary Larson presented an offer by Groover-Hoffman, Inc. to Doran Hunt for Hunt Development, Inc. and Doran Hunt, individually, for the proposed purchase of the park. The terms were in accordance with those of the "Sales Proposal" The terms called for a down payment of \$600,000.00 which was to be paid in full on or before February 9, 1980, and with the balance of \$3,250,000.00

sales price to be amortized over twenty years with an interest rate of 12%. (Findings of Fact, R. 00495)

Gary Larson represented to Doran Hunt at the time Hunt executed the Earnest Money agreement that he believed Groover-Hoffman to be a good and capable buyer. This representation was subsequently proven to be false as determined by the court at trial. (Findings of Fact, R. 00495)

In 1979 Brent Barnum and Ross Broadbent were engaged in the real estate business and were doing business as Barnum-Broadbent Real Estate Company in Salt Lake City, Utah. They had several real estate agents working for them at that time.

One of their agents was Gary Larson. Mr. Larson became an agent for Barnum-Broadbent Real Estate Company on July 16, 1979. During this employment as a real estate salesman, Mr. Larson obtained a real estate listing from Mr. Doran Hunt acting either for himself or also on behalf of Hunt Development Company, a closed corporation. This listing agreement was signed by Mr. Hunt and Mr. Larson on November 2, 1979. The purpose of this agreement was to sell Hunt Development Company's Mobile Home Park which was located in Rock Springs, Wyoming. The agreement provided that in the event Barnum-Broadbent Real Estate Company consummated a sale, Mr. Hunt agreed to pay a three (3%) percent real estate commission to Barnum-Broadbent Real Estate Company on the total sales price of the mobile home

park, including the sale of all trailers on the property owned by Doran Hunt and Joan Hunt, his wife.

The listing agreement was non-exclusive and was for a term of six (6) months. (See Addendum "A", "Letter of Agreement for Payment of Commission")

On November 9, 1979, pursuant to the listing agreement, Mr. Larson procured a buyer for the mobile home park. The buyer was Groover-Hoffman, Inc. The agreement between buyer and seller is evidenced by Doran Hunt and Larry Groover signing the Earnest Money Receipt and Offer to Purchase document. (See Addendum "B", "Earnest Money Receipt and Offer to Purchase")

The Earnest Money Agreement sets forth the terms and conditions of the sale. A Promissory Note for \$5,000.00 was given at the time of the signing of the Earnest Money as consideration. (See Addendum "C", "Promissory Note")

The promissory note was to be replaced by a check dated November 19, 1979. (See Addendum "D", Groover-Hoffman, Inc. Check for \$5,000.00) There is some dispute as to when this was actually done, but, the records of Barnum-Broadbent show that the check is Receipt No. R-265, Groover-Hoffman/Grandview Park, November 21, 1979, Gary L., Amount Received \$5,000.00. (See Addendum "E", "Receipt") The check was returned marked "refer to maker" but was processed a second time and was paid on by Groover-Hoffman's bank on or about November 30, 1987. (See Addendum "D", "Groover-Hoffman Check for \$5,000.00")

Addendum "E" shows that Barnum Broadbent Real Estate Company returned Mr. Groover's five thousand dollars (\$5,000.00) pursuant to his request after it appeared that Mr. Hunt was unwilling to cooperate and they could not go forward with the purchase on December 10, 1979 (T., Vol. 2, p. 187), which would have been the day after the time in which Mr. Hunt had, pursuant to the Earnest Money Agreement, to permit Mr. Groover to inspect the site and books of the mobile home park.

The trial court found that there was a mutual rescission of the Earnest Money and Offer to Purchase dated November 9, 1979 on December 10, 1979. (Finding of Fact, R. 00492, paragraph 28)

Gary Larson had prepared a back up offer from the Carlyle Group for the purchase of the park (See Addendum "E", "Earnest Money Receipt and Offer to Purchase"); and although there was a signed offer from the Carlyle Group and a signed counter-offer from Doran Hunt, neither offer was accepted by the other. (See Addendum "F", "Earnest Money Receipt and Offers to Purchase from the Carlyle Group) The park was eventually sold to a third party whom Mr. Hunt had personally contacted by other means.

One of the apparent reasons for Doran Hunt's reluctance to enter into good faith negotiations with Groover-Hoffman, Inc. for the sale of the mobile home park was that he had already received an offer for the purchase of the park from Robert H. Hammond on November 8, 1987 (one

day before he the offer was accepted by Groover-Hoffman, Inc.). (See Addendum "G", "Letter Offer dated November 8, 1979 from Robert H. Hammond)

In particular, the relevant terms of the Earnest Money Agreement before the Court were as follows:

1. The total purchase price of the mobile home park in Rock Springs was three million two hundred fifty thousand dollars (\$3,250,000.00) (which was the full appraised value of the mobile home park.).

2. Five thousand dollars (\$5,000.00) as earnest money.

3. Two hundred thousand dollars (\$200,000.00) minimum down payment by January 9, 1980.

4. Mr. Groover had thirty (30) days from November 9, 1979 to:

a. Inspect the site, and

b. Verify bookkeeping to buyer's satisfaction.

5. Mr. Groover had the right to purchase all remaining trailers at the mobile home park for fourteen thousand dollars each; plus other personal property with the purchase price to be negotiated prior to closing.

6. Mr. Hunt agreed to pay three (3%) commission on the sale of the real property and personal property.

On November 12, 1979 Mr. Hunt signed the Earnest Money Agreement on behalf of Hunt Development Company and on November 9, 1979, Larry B. Groover signed on behalf of

Groover-Hoffman, Inc.

Mr. Hunt and Mr. Groover each agreed to be legally bound to this agreement as is evidenced by line 45 of the Earnest Money Agreement which states:

"We do hereby agree to carry out and fulfill the terms and conditions specified above, and the seller agrees to furnish good and marketable title with policy of title insurance in the name of purchaser and to make final conveyance by warranty deed or (not other)."

In furtherance of the parties' agreement, Mr. Larson began trying to get Mr. Groover together with Mr. Hunt for three (3) purposes. The first was to inspect the site; the second was to verify the books; and the third was to determine the number of trailers in the mobile home park and to negotiate on other personal property Mr. Hunt wanted to sell at the site.

Mr. Larson's written records and testimony evidence that he telephoned Mr. Groover and Mr. Hunt on November 19, 1979 to set up the inspection of the mobile home part in Rock Springs between Mr. Hunt and Mr. Groover. Mr. Hunt, at that time agreed to meet Mr. Groover and Mr. Larson in Rock Springs on November 20, 1979. Mr. Hunt was also advised that Mr. Groover's earnest money had been deposited with the brokers.

The night before Mr. Larson came back to Utah, he again contacted Mr. Hunt and Mr. Groover to set up a meeting in Tooele, Utah to verify the books of the mobile home park. The verification of the books was to be at 5:30 p.m. at

Doran Hunt's office in Tooele. Mr. Hunt agreed to be at this meeting.

The next day (11-26-79), as agreed upon, Mr. Larson took Mr. Groover to Tooele to meet at Mr. Hunt's office. Upon arriving there, Mr. Hunt was not there but was at home. Mr. Hunt's wife said he wasn't feeling well and was sleeping and would not disturb him. (T., Vol. 2, page 81)

Therefore, the books of the mobile home park were not verified by Mr. Groover or Mr. Larson.

Thereafter, Mr. Larson attempted once more to obtain a commitment from Mr. Hunt to have him meet Mr. Groover at the mobile home park site. The meeting was set for December 3, 1979 in Rock Springs, Wyoming. (T., Vol. 2, pages 84-5)

Mr. Larson called Mr. Hunt the night of December 2, 1979, to be assured that Mr. Hunt would be meeting him and Mr. Groover in Rock Springs, Wyoming the next day. Mr. Larson offered Mr. Hunt a ride to Rock Springs with him and Mr. Groover. Mr. Hunt declined and stated that he would be going to Rock Springs long before they went and that he would see them up there. (T., Vol 2, page 85)

Mr. Larson left with Mr. Groover and drove to Rock Springs to meet with Mr. Hunt. When they arrived, Mr. Hunt was not there. They looked around a bit at the site and inspected what they could inspect, and then returned to Tooele. They were informed, upon calling Mr. Hunt, that he would meet with them in Tooele that afternoon about 4:30 or 5:00 p.m. When they arrived in Tooele that afternoon, they

went directly to Mr. Hunt's office. He was not there. They were told he was at his home. They went to his home for the purpose of inspecting the books, and were also told they could not inspect the books for the mobile home park. (T., Vol. 2, pages 86-88)

SUMMARY OF THE ARGUMENT

1. The Earnest Money Receipt and Offer to Purchase dated November 9, 1979, which was signed by both Doran Hunt for Hunt Development Company, as Seller, and Larry B. Groover for Groover-Hoffman, Inc., as purchaser, was a valid contract for the sale of the Grandview Mobile Home Park and as such a real estate commission of three (3%) percent of the total purchase price is due and owing the Plaintiff/Appellant.

2. Where the real estate broker procures a customer who is accepted by the principal, and a valid, binding or enforceable contract is drawn between them, the commission for finding the customer is earned even though the contract is not fully carried out, and the seller is conclusively presumed to have accepted the ability of the buyer to perform.

3. A real estate broker is entitled to a real estate commission where there is a valid, binding or enforceable contract drawn between the seller and the buyer even though the buyer fails to comply with the terms of the

contract because of financial inability.

4. Where the commission is dependent upon a special condition such as where the commission is due "upon consummation of the sale" but where the seller refuses to complete the sale, the seller's actions act as an estoppel for him to deny that the commission has been earned.

5. When a contract between the seller and the buyer is executed and is valid, binding or enforceable, the broker has earned his commission even though the buyer and the seller may subsequently modify or cancel the agreement by mutual consent.

ARGUMENT

POINT ONE. THE EARNEST MONEY RECEIPT AND OFFER TO PURCHASE DATED NOVEMBER 9, 1979, WHICH WAS SIGNED BY BOTH DORAN HUNT FOR HUNT DEVELOPMENT COMPANY, AS SELLER, AND LARRY B. GROOVER FOR GROOVER-HOFFMAN, INC., AS PURCHASER, WAS A VALID CONTRACT FOR THE SALE OF THE GRANDVIEW MOBILE HOME PARK AND AS SUCH A REAL ESTATE COMMISSION OF THREE (3%) PERCENT OF THE TOTAL PURCHASE PRICE IS DUE AND OWING THE PLAINTIFF/APPELLANT.

On November 2, 1979, Doran Hunt listed the Grandview Mobile Home Park for sale with Barnum-Broadbent Real Estate Company. This listing agreement did not indicate any specific selling price or terms of purchase. The agreement

stated the following terms with respect to commission:

"It is agreed that Barnum and Broadbent shall receive a 3% commission on the total price of the Grandview Mobile Home Park in Rock Springs, Wyoming, should they provide a purchaser, who may in the future consummate the purchase of this mobile home park."

Gary A. Larson, real estate salesman for Barnum-Broadbent also received a "Sales Proposal" concerning the property about the same time. The Sales Proposal outlined the following:

- A. Total purchase price of mobile home park:
\$3,250,000.00
- B. Down Payment:
\$ 600,000.00
- C. Balance carried by Hunt Development Company, Inc.
- D. Twenty (20) year contract at twelve (12%) per annum.
- E. Fifty (50) to eighty (80) trailers, purchase negotiable.

On November 9, 1979, through the efforts of Mr. Larson, acting as agent for Barnum-Broadbent Real Estate Company, an Earnest Money Receipt and Offer to Purchase was signed by Larry Groover and Doran Hunt for their respective business entities.

Where the real estate broker procures the signature of the purchaser on the "Earnest Money Receipt and Offer to

Purchase" there is created a binding contract on both the buyer and the seller and there is created legal consideration for the promise of the vendor to pay a commission to the broker. Garff Realty Co. v. Better Buildings, Inc., (Utah, 1951) Utah 234 P.2nd 842; Reich v. Christopulos, Utah 256 P.2nd 238; Sproul v. Parks, Utah 210 P.2nd 436.

The consideration paid for the Earnest Money Agreement was a Promissory Note for five thousand (\$5,000.00) dollars, and other mutual promises set forth in the Earnest Money Agreement. Although the note was to be replaced by a company check by November 16, 1979, the check was actually written on November 19, 1979, and it was sent to the bank twice before it was cleared for payment. Nevertheless, payment of the \$5,000.00 was accomplished. After Mr. Hunt totally frustrated the consummation of the sale, Barnum and Broadbent returned the five thousand dollars to Mr. Larry Groover.

The Defendants argue that the Earnest Money Agreement was not valid because the company check did not replace the Promissory Note by November 16, 1979 and therefore there was a lack of consideration. This is not true.

The Promissory Note alone constitutes a legal, binding agreement and a promise to pay, hence a valuable consideration. If breached, remedies are available for specific performance. In fact, the Promissory Note was

replaced by a negotiable company check which Mr. Hunt did not object to at the time.

Secondly, in the case of Centruy 21 All Western Real Estate and Investment v. Webb, (Utah, 1982) 645 P.2nd 52, at page 55, Justice Oaks, writing for the majority states that payment of the earnest money as set forth in the Earnest Money Agreement is not necessary to bind the agreement if the parties also exchanged mutual promises as part of the agreed upon performance in the Earnest Money Agreement.

"We cannot agree with the District Court's holding that the Earnest Money Agreement failed for lack of consideration because the seller (as she testifies) never received the \$100.00 deposit. Apart from the fact that the seller signed an Earnest Money Agreement that acknowledged the receipt of the \$100.00, the agreement contained mutual promises, which provide adequate consideration to make the agreement binding. Mortgage Investment Co. v. Toone, (Utah, 1965) 17 Utah 2d 152, 406 P.2nd 30; Craigmile v. Sorensen, (Minn., 1953) 239 Minn 383, 58 N.W.2d 865; Thomsen v. Glenn, (Nev., 1965) 81 Nev 56, 398 P.2nd 710. (Emphasis added.)

Hence, even if this Court were to find that the Promissory Note did not provide sufficient consideration, the other mutual promises as set forth in the Earnest Money Agreement provided adequate consideration to make the agreement valid, binding and enforceable.

POINT 2. WHERE THE REAL ESTATE BROKER PROCURES A CUSTOMER WHO IS ACCEPTED BY THE PRINCIPAL, AND A VALID, BINDING, OR ENFORCEABLE CONTRACT IS DRAWN BETWEEN THEM, THE COMMISSION FOR FINDING THE CUSTOMER IS EARNED EVEN THOUGH

THE CONTRACT IS NOT FULLY CARRIED OUT, AND THE ABILITY OF THE PURCHASER IS CONCLUSIVELY PRESUMED.

In this case, without making any preconditions concerning the financial ability of the buyer to qualify, Doran Hunt signed the Earnest Money on November 9, 1987.

Where Doran Hunt signs the Earnest Money without any preconditions, and being a sophisticated real estate broker himself, he is estopped to deny the ability of the buyer.

This rule has been followed in most jurisdictions throughout the country. By way of illustration, in MacNeill Real Estate v. Rines (Maine, 1949) 144 Me 27, 64 A2d 179, the court, after pointing out that the duty of the broker to find a purchaser was discharged by producing a customer ready and willing to meet the exact terms of sale proposed by his employer, stated that if the broker produced a customer who entered into a mutually enforceable contract with the owner for the purchase and sale of the real estate in question upon terms satisfactory to the owner, the broker was entitled to his commission whether or not the customer actually carried out his contract, the principal being deemed to have accepted the contract in lieu of the exact performance of the broker's contract. See also Labbe v. Cyr (Me., 1954) 150 Me 342, 111 A2d 330.

Larry Groover, representing Groover-Hoffman, Inc., was a ready, willing and apparently able buyer even in spite of the fact that the trial court found that Groover-Hoffman,

Inc. lacked the financial ability to proceed with the sale on its own accord. The parties understood that the "proof of the pudding" was whether or not Larry Groover could come up with the down payment within the time frame contemplated in the Earnest Money.

Where there is a written, signed, binding agreement between the seller and the buyer, as in this case, the readiness, willingness and ability of the purchaser are conclusively presumed and the right of the broker to his commission is not affected by failure of either party to perform. 12 Am Jur 2d Brokers, Section 206 at page 949.

Lipton v. Johansen, et. al., (Cal., 1951) 233 P.2d 648 states:

"The readiness, willingness, and ability of the vendee (Buyer) are conclusively presumed in a suit by a broker to recover his commission upon proof that the vendor has entered into a valid contract of purchase and sale with the vendor (Seller)." Malmstedt v. Stillwell, (Cal) 294 P. 41 (Emphasis added.)

"The right of the Broker to his commission is not affected by failure of either party to carry out the agreement." Twogood v. Monnette, (Cal.) 215 P. 542.

In Garff Realty Co. v. Better Building, Inc., (Utah, 1951) 234 P2d 842, the court held that if a seller acts negligently and in such a way as to justify others in supposing that a contract is assented to by him, he will be bound at law and in equity, even though he supposes the writing is an instrument of an entirely different character. The same might be said of Doran Hunt. Where he allows his

real estate agent and the prospective buyer to believe that he wants to follow through with the transaction, he should be bound at law and equity on the agreement.

Therefore, where the Seller and Buyer have both signed a valid Earnest Money Agreement, there is a "conclusive presumption" that the Seller has accepted the Buyer as being ready, willing and able to purchase and it is not the duty nor the responsibility of the Broker to prove to the Seller that the Buyer has the requisite ability in his suit to collect his commission. 12 C.J.S. Section 152.

POINT 3. A REAL ESTATE BROKER IS ENTITLED TO A REAL ESTATE COMMISSION WHERE THERE IS A VALID, BINDING OR ENFORCEABLE CONTRACT DRAWN BETWEEN THE SELLER AND THE BUYER EVEN THOUGH THE BUYER FAILS TO COMPLY WITH THE TERMS OF THE CONTRACT BECAUSE OF HIS FINANCIAL INABILITY.

The trial judge in this case ruled against the Plaintiff/Appellant and in favor of the Defendants/Respondents on this point by finding that although the Earnest Money Agreement had been validly executed by the parties, and that consideration had passed between them, that since the buyer, Groover-Hoffman, Inc. was unable to perform within the time frames set forth in the agreement, that the agreement was invalid and unenforceable. With this reasoning the Plaintiff/Appellant

respectfully disagrees.

The term "able" purchaser, insofar as determining whether the broker has provided the seller with a purchaser who is ready, willing and able, refers to a purchaser who is financially able to command the necessary funds to complete the purchase within the time allowed under the offer. Record Realty, Inc. v. Hall, (Wash.) 15 Wash App 826, 552 P2nd 191.

A majority of the jurisdictions, however, subscribe to the rule of law that a real estate broker earns his commission when the buyer and the seller have entered into a valid, binding or enforceable contract between them, even though the buyer subsequently fails to comply with the terms of the agreement because of his financial inability.

It has been generally held that if a valid contract is entered into between the broker's employer (seller) and his customer (buyer), the broker is entitled to his commission even though the customer (buyer) is unable to carry out the contract. 12 Am Jur 2d, Brokers, Section 206 at page 949. See also Dotson v. Milliken, 209 US 237, 52 L ed 768, 28 S Ct 489; Moore v. Irwin, 89 Ark 289, 116 SW 662; Wray v. Carpenter, 16 Colo 271, 27 P 629, 3 ALR 564; Swinebroad v. Foster, 196 Ky 459, 244 SW 881; Menton v. Melvin, 330 Mass. 355, 113 NW2nd 447; 51 ALR 1393, s. 74 ALR2d 454, Section 6. The basis for this rule is that acceptance by the vendor (seller), uninfluenced by misrepresentations of the broker, is a determination by the

vendor of the purchaser's ability to perform. 12 Am Jur 2d, Brokers, Section 206 at page 949. See also Kingsland Land Corp. v. Lange, 191 Va 256, 60 SE2d 872.

For example, in Richard v. Falleti, (N.J., 1951) 13 NJ Super 534, 81 A2d 17, the court said:

"It is familiar law that in the absence of a special agreement, a broker earns his commission when he produces a customer able and willing to buy the property upon the seller's terms. The broker is entitled to a commission if the seller accepts the broker's customer and enters into a binding contract with him, even though the buyer eventually proves to be financially unable to carry out the purchase."

In Avery v. Howell, (Kan., 1914) 91 Kan 297, 137 P 785, the court stated that ordinarily a real estate broker earns his commission when he produces a customer with whom his principal entered into an enforceable contract for the sale of land, even though the title to the land did not actually pass, and that after the principal entered into such a contract, not being induced thereto by any deceit on the part of the broker, he could not avoid liability for a commission by showing the inability of the buyer to carry out the agreement.

And in Leinbach v. Dyatt, (Kan., 1923) 112 Kan 782, 212 P 894, the court stated that where the seller accepted a buyer procured by his agent, by entering into a contract of sale with him, the seller's liability for a commission to his agent was no longer affected by the question of the buyer's ability to pay.

In Seidel v. Walker, (Tex. Civ. App., 1915), 173 SW 1170, the court in holding that a broker was entitled to his commission for producing a customer with whom the owner of the property entered into a binding contract even though the purchaser was subsequently found to be financially unable to carry out the contract, stated that where an agent produced a customer with whom the seller was satisfied and a contract was made, the agent was no longer concerned with the ability of the purchaser to buy, since the seller relieved him of any further duty in that respect when he accepted the purchaser as satisfactory and made a binding contract with him.

Again, in Baker v. Strawder, (Ga., 1935) 50 Ga App 388, 178 SE 206, the court stated in its syllabus that subject to some limitations concerning the concerning the good faith of the agent and knowledge of the customer's financial condition, the general rule is that the agent may recover his commission for procuring a purchaser with whom a valid contract is made, even though the purchaser later was found to be financially unable to comply with the terms of the contract.

For a more detailed summary of those jurisdictions which have similarly ruled, see 74 ALR 2d 454, Section 6.

In cases such as those cited above, to be entitled to a commission, the broker must have acted in good faith and without knowledge of the customer's financial ability. See for example, Hare v. Bauer, 223 Minn 285, 26 NW2d 359.

While the court in this case found that the agent, Gary Larson, may have been negligent in not going far enough to determine the buyer's financial qualifications, there is nothing in the record to indicate that he did not act in good faith, or with the best of intentions, or that he was possessed of any knowledge which would have put him on notice that the buyer was financially unsound.

Quite to the contrary, Gary Larson was made aware by Mr. Groover that he was an attorney, locensed to practice in Florida, was a certified life underwriter and also a certified financial planner. (T., Vol. 2, page 67) He was aware that he had been working for I. L. William in the insurance business, and had been told that he had over 180 personal clients. He believed Mr. Groover had an "incredible track record" for raising money. (T., Vol. 2, pages 68-69) He had attended seminars at the Hotel Utah where Mr. Groover was the principal speaker concerning investments in diamonds and collectibles. (T., Vol. 2, page 70) He knew that he was working on other projects out of town that included seven figures. (T., Vol. 2, page 70)

Gary Larson reported to Mr. Hunt that Mr. Groover's strong asset was in his apparent ability to raise money. He reported all of the other things he'd found out about Mr. Groover to Mr. Hunt, who himself was not an unsophisticated seller, inasmuch as he himself was in business, and was a real estate broker. (T., Vol.2, page 72). He held nothing back from Mr. Hunt (T., Vol 2, page 75) and told Mr. Hunt

that the "proof of the pudding" would be in seeing if the money were raised in the length of time allowed by the Earnest Money. Mr. Hunt seemed satisfied with this arrangement. (T., Vol. 2, page 75 and 76)

In Strout Realty, Inc. v. Milhous, (Idaho, 1984) 689 P.2d 222, the Idaho Supreme Court reiterates the long-standing rule that a real estate broker's commission is earned when he produces a ready, willing and able purchaser on terms acceptable to the seller. In Strout the court recognizes that there are a few cases which specify the time at which the readiness, willingness and ability of the purchaser is to be examined, case authority has long held that when the seller signs the earnest money agreement he is estopped to deny that the buyer is then ready, willing and able. See Mansfield v. Smith, (Wis., 1979) 88 Wis.2d 575, 277 N.W. 2d 740; MacNamara v. Steckman, (Cal., 1927) 202 Cal. 569, 262 P. 297; Wray v. Carpenter, (Colo., 1891) 16 Colo. 271, 27 P. 248. This rule is referred to as the traditional estoppel rule. In Strout the the court states that the time for determining the buyer's ability to perform under this rule is at the time the seller signs the earnest money agreement, and the Defendant/Respondents should not be allowed to claim that the buyer's ability to perform can be examined sometime after the seller has executed the earnest money agreement. Once the vendor accepts the buyer that the broker has produced by signing the earnest money agreement and attempts are made to close, the seller is estopped to

dispute the financial ability of the buyer.

The Utah Supreme Court appears to have adopted the traditional estoppel rule. In Sproul v. Parks (Utah, 1949) 210 P.2nd 436 at page 438 Supreme Court Justice McDonnough held, writing for the majority opinion, that "if defendants have been presented with a written acceptance of their counter-offer within the listing period,...they would be entitled to assume that the purchaser then was financially able to perform, not that he might become able sometime in the future."

Some jurisdictions, including Idaho, have modified the traditional estoppel theory under the Ellsworth Dobbs, Inc. v. Johnson, (N.J., 1967) 50 N.J. 528, 236 A. 2nd 843 decision. That case involved a buyer who defaulted before the transaction closed. Because the buyer was financially unable to close the transaction, the Ellsworth Dobbs court held that the broker had failed to produce an able buyer and therefore had not completed performance entitling him to a commission. According to the New Jersey rule announced in Ellsworth Dobbs, a "broker earns his commission when (a) he produces a purchaser ready, willing and able to buy on terms fixed by the owner, (b) the purchaser enters into a binding contract with the owner to do so, and (c) the purchaser completes the transaction by closing the title in accordance with the provisions of the contract. Thus, the Ellsworth Dobbs court modified the time for determining the ability of the buyer from the time of executing the earnest money

agreement to the time of closing. The seller, however, is still estopped under the Ellsworth Dobbs theory from disputing the buyer's ability after the time of closing.

The Oregon court stated in Setser v. Commonwealth, Inc., (Ore., 1970) 256 Ore. 11, 470 P.2nd 142:

"It should be emphasized that the adoption of this (Ellsworth Dobbs) rule does not mean that the buyer must completely perform all of the terms of an installment contract before the broker is entitled to his commission. Thus, if the broker has done everything necessary under the contract to close the sale and there remains only the payment of future installments, the broker need not wait until the future installments are paid before he is entitled to his commission."

The Plaintiff/Appellant argues that where the broker has done everything in his power to attempt to close the transaction by producing the buyer for purposes of inspecting the premises, examining the books and meeting with the seller (T., Vol. 2, pages 79-89), so the seller can make an informed decision regarding the buyer's ability to perform, and where those efforts have been totally frustrated by the seller, and where the seller continues to encourage the real estate agent to attempt to close (T., Vol. 2, page 89), and makes no mention to the real estate agent of any concerns he may have about the buyer's ability to perform (T., Vol. 2, page 75), that the seller is then estopped to deny the buyer's ability to perform even if this court were to adopt the reasoning of the Ellsworth Dobbs decision.

POINT 4. WHERE THE COMMISSION IS DEPENDENT UPON A SPECIAL CONDITION, SUCH AS WHERE THE COMMISSION IS DUE "UPON CONSUMMATION OF THE SALE" BUT WHERE THE SELLER REFUSES TO CO-OPERATE IN ALLOWING THE BUYER TO COMPLETE THE SALE, THE SELLER'S ACTIONS ACT AS AN ESTOPPEL TO DENY THAT THE COMMISSION IS DUE THE BROKER.

The Letter of Agreement for Payment of Commission dated November 2, 1979 between Gary Larson, acting as agent for Barnum and Broadbent Real Estate Company and Doran Hunt or Hunt Development Company Inc. provided for the special condition that the 3% commission was not due unless the agent should provide a purchaser "who may in the future consummate the purchase of this mobile home park."

Thus it would appear that no commission would be due in the ordinary sense of the word, unless a sale was actually consummated between the seller and the buyer.

It is Doran Hunt's argument that he owed no real estate commission because no sale was ever "consummated". This, however, should not be the rule of law in this case.

The Utah State Supreme Court set forth the rule of law in E.A. Strout Western Realty Agency, Inc., vs. Peterson, (Utah) 585 P.2nd 456 at page 458, as follows:

"This Court speaking through Mr. Justice Crockett, stated therein that if the real estate agent finds a ready, willing and able buyer for seller's property 'and the sale is not completed because of lack of co-operation or obstruction by the lister, the agent is nevertheless entitled to his commission'," (Emphasis added.) Davis v. Health Development Company, (Utah,

1976) 558 P.2nd 594.

Being even more specific, in Hoyt, et. al. v. Wasatch Homestead, (Utah, 1953) 261 P.2nd 927, the Utah State Supreme Court ruled: where the listing agreement states that a real estate commission would be paid only if a sale were consummated, (which point the Defendants/Appellants argue) it is contemplated that the seller would co-operate in good faith towards consummation of the sale.

"Under such circumstances Hoyt could not by refusal to co-operate, defeat the Defendant's right to its commission. And we say this advisedly, notwithstanding the finding of the trial court, that when Hoyt originally engaged the Defendant to sell the property, it was agreed that the commission would be paid only if a sale were consummated.

"That agreement certainly contemplated that the Plaintiff would co-operate in good faith toward the accomplishment of the purpose for which he employed Defendant. He cannot be permitted to procure them to obtain a buyer, on terms accepted by the Plaintiff, and then prevent the accomplishment of what he requested and authorized them to do by arbitrarily refusing to perform his part of the transaction. Under such circumstances, he will not be heard to complain of their failure to do that which he prevented."
Lesser v. W. B. McGerry and Co., (Cal.) 8 P.2nd 1058; Boyer Company v. Lignell, (Utah) 567 P.2nd 1112. (Emphasis added.)

Doran Hunt, through his uncooperative and evasive conduct, totally obstructed and frustrated the sale of real property and trailers to Groover-Hoffman, Inc.

Larry Groover testified that he would have consummated the purchase of the Grandview Mobile Home Park according to the terms of the Earnest Money Agreement if

Doran Hunt had permitted him to verify the books and records and had given him adequate opportunity to inspect the site with Mr. Hunt. (T., Vol. 2, pages 184-187)

Barnum Broadbent Real Estate Company did procure for Doran Hunt a ready, willing and apparently able buyer.

The courts in some jurisdictions distinguish between contracts by which a broker is employed to procure a purchaser and a broker who is employed to effect a sale. Under the first-mentioned type, the courts generally find that a broker has earned his commission when the broker has produced a ready, willing and able buyer. Under the second-mentioned type, the courts will not accord the broker his commission until the sale has actually been consummated or closed.

The courts are generally agreed, however, that a broker is entitled to his commission under both types of contracts when he has produced a ready, willing and able buyer who has accepted the terms of the agreement, notwithstanding that no actual transfer takes place due to the refusal of the seller to convey. The courts reason that upon procuring the prospective purchaser, who is ready, willing and able, and willing to comply with the terms agreed upon, the broker has performed the services for which he was employed, and that, such being the case, he should not be deprived of his compensation by the refusal or failure of his employer to complete the transaction.

In those cases in which failure of consummation of

the transaction was due to the absolute refusal of the seller to go through with the deal, the courts have declared that the seller has thereby waived his right to require conveyance before he becomes liable for the commission. 169 ALR 607, Knowles v. Henderson, 156 Fla 31, 169 ALR 600, 22 So2nd 384.

If nonperformance by the customer is caused by the acts of the principal, the broker is entitled to his commission even though the brokerage contract made commission dependent upon consummation of the transaction. 12 Am Jur 2d, Brokers, Section 205 at page 949. See also Parrish v. Wightman, 184 Va 86, 34 SE2d 229.

The Plaintiff/Appellant argues that in the case now before this court the broker, Barnum Broadbent Real Estate Company, did everything in its power to attempt to close the transaction by producing a buyer, Groover-Hoffman, Inc., for the seller, Doran Hunt. Groover-Hoffman, Inc. by and through its agent, Larry Groover, attempted to inspect the trailer park with Mr. Doran Hunt, to examine the book and records, and to meet with the seller, so he could make an informed decision regarding the reliability of the seller's representations with respect to the value and income of the mobile home park.

The efforts to meet with the seller and to inspect the books and records were totally frustrated by Doran Hunt by failing to keep his appointments (See Findings of Fact, R. 00500), although he continued to encourage the Gary

Larson, the real estate agent, to attempt to close, and made no mention to Gary Larson of any concerns he may have had about the buyer's ability to perform. Doran Hunt, under this set of factual circumstances, should be estopped to deny the buyer's ability to perform even under the Ellsworth Dobbs rule that "ability" is to be determined at the time of closing.

This exception to recovery has been followed by a number of courts. For example in Livingston v. Malever, (Fla 1931) 103 Fla 200, 137 So 113, the refusal of the owner to go through with the sale of his land to a prospective purchaser procured by his broker was held by the court to constitute a waiver on the owner's part, of full performance, by the broker, of his contract to "sell" the land, and the broker was therefore held entitled to maintain an action to recover his compensation notwithstanding an actual sale was not consummated.

In Pearson v. Crummer, (Cal App, 1929) 97 Cal App 707, 276 P 153, the court held that where a broker negotiated a valid agreement between the defendant and another for the exchange of property, and the broker's contract of employment with the defendant provided that in the matter of commission "in the deal now pending," the commission should be paid "on or before consummation of this exchange," rejected the contention that the broker did not earn his commission in the absence of proof that the exchange had been consummated, and stated that the broker,

having done everything that he was employed to do, earned his commission; that the minds of the parties definitely met, with one exception which was left for future determination, and when that element was ascertained, all that remained was the actual exchange by mutual conveyances, namely, the consummation of the exchange, over which the Plaintiff had no control; and that the solemn covenant of the contracting parties required performance of this, the vital object of their contract, but if by mutual consent or owing to the default of either party the conveyances were not completed, the broker was entitled to compensation, because he had earned it and it had previously been agreed that the commission should be paid on or before such event.

In West Realty & Invest. Co. v. Hite, (Tex., 1926) 283 SW 481, the court stated that the broker employed to sell has found a purchaser to who is ready, able and willing to buy at the price and upon the terms specified in the broker's contract of employment, he had earned his commission even though through some fault or inability of the owner the deal is never actually consummated. The rule was extended in those cases where the commission was to be paid only upon the consummation of the sale, where such consummation was prevented through the fault of the owner. The court stated: "The law will not permit the owner to deny to the broker his right to recover a commission where the broker himself has fully complied as far as possible, and where his only dereliction is produced entirely through

the fault of the owner himself."

It is urged that the Utah courts follow this reasoning. For example, though the court ruled against the listor on the facts of the case, in Davis v. Health Development Company (Utah, 1976) 558 P.2nd 594 Mr. Justice Crockett stated that if the real estate agent finds a ready, willing and able buyer for the seller's property, "and the sale is not completed because of lack of cooperation by the listor, the agent is nevertheless entitled to his commission."

In Boyer Company v. Lignell, (Utah, 1977) 567 P.2nd 1112, the court recognized the principle held in other cases that a party to a real estate listing agreement cannot prevent or interfere with the performance of the agreement and then assert the nonperformance as a defense. Hoyt v. Wasatch Homes, (Utah, 1953) 1 Utah 2nd 9, 261 P.2nd 927; Cannon v. Stevens, (Utah, 1977) 560 P.2nd 1383; William G. Vandever & Co. v. Black, (Utah, 1982) 645 P.2nd 637.

In Curtis v. Mortensen, (Utah, 1954), 267 P2nd 237 at page 238, Justice Wade stated:

"It is obvious that the court has stated in the above cited cases that a binding agreement or offer of the buyer is necessary if the broker is to be entitled to his commission is to protect the seller from being obligated to pay a commission where the proposed buyer either cannot or will not perform and the seller is left without a remedy which can be enforced against the buyer. This was not the case here. The proposed purchasers were anxious to buy the property even after respondent's rescission of the earnest money agreement...The (sellers) changed their minds and refused to sell and not

because the buyers refused to make a binding agreement. Under such circumstances appellants here fulfilled their part of the listing agreement by having produced purchasers who are ready, willing and able to buy the listed property and are entitled to their commission."

The court went on to state further:

"As stated in 8 Am Jur 2d 184, p. 1097: 'Once the broker has procured a person who is able, ready and willing to purchase on the terms offered by the owner, he is entitled to commissions, even though failure to complete the contract is due to the default or refusal of the employer.'"

And in Little & Little v. Fleishman, (Utah) 35 Utah 566, 101 P 984 at page 984, 24 L.R.A., N.A. 1182, the court stated:

"...the substantial feature of the agreement between the plaintiffs and the defendant are that the plaintiffs were employed to effect, not consummate, a sale, and were entitled to a commission in the event of a sale at any price agreed upon. When the plaintiff obtained and produced a purchaser who was able, ready and willing to purchase for the price, and on the terms proposed they did all that was required of them, and the owner could not, under the terms of his contract with them, arbitrarily refuse to sell and decline to enter into negotiations of a sale with the proposed purchaser without becoming liable to the Plaintiffs for their commission."

The Little & Little case cites as authority for its decision Hoyt v. Wasatch Homes, (Utah) 261 P2nd 927, Down v. DeGroot, (Cal App) 83 Cal App 155, 256 P 438, and Peeler v. Bean, (Tex Civ App) 35 SW2d 395.

Thus, the Plaintiff/Appellant urges this court to

support the broker's claim for a commission even if it were to follow the Ellsworth-Dobbs decision on the rationale that where the seller frustrates the consummation of the sale, the seller should not be allowed to benefit by his recalcitrant acts to prevent the sale, and thereby deny the commission.

POINT 5. WHEN A CONTRACT BETWEEN THE SELLER AND THE BUYER IS EXCUTED AND IS VALID, BINDING OR ENFORCEABLE THE BROKER HAS EARNED HIS COMMISSION EVEN THOUGH THE BUYER AND THE SELLER MAY SUBSEQUENTLY MODIFY OR CANCEL THE AGREEMENT BY MUTUAL CONSENT.

It has been held and recognized in a number of cases that where a valid contract has been entered into between the owner of real property and a customer procured by the real estate broker, the subsequent release by the owner, or an agreed cancellation or rescission of the contract does not defeat the right of the broker to recover his commission. 74 ALR 2d 459, note 8.

Thus, for example, in Abegglen v. Burnham, (DC Idaho, 1950), 91 F Supp 61, affd (CA 9) 187 F2d 1021, the court in discussing the rights of the real estate broker to his commission, said:

"The general rule is that after a contract between the principal and a customer produced by the broker has been concluded, its subsequent modification or cancellation does not defeat or affect the right of the broker to a commission,

unless it is done at his request or with his consent or knowledge and acquiescence."

In Waters v. W.O. Wood Realty Co., (Ala., 1954) 260 Ala 527, 71 So.2nd 1, the court, after pointing out that the broker's right to a commission for sale of realty depended upon the validity of the contract between the purchaser and the vendor, states that the parties to that contract, if it was valid, could not by any arrangement between themselves, defeat the claim of the broker for compensation.

In Scott v. J.C. Ferguson Realty Co., (Iowa, 1928) 206 Iowa 1158, 221 NW 785, it was held that the owner of property, after entering into an agreement with a purchaser procured by a broker, was not in a position to defeat the claim of the broker for his commission by refusing to enforce his contract against the buyer or by releasing the buyer from the obligations of his agreement, if it was legally enforceable.

In E.A. Strout Western Realty Agency, Inc. v. Peterson, (Utah, 1978) 585 P.2nd 456 Justice Wilkins set down the rule that for a broker to recover a real estate commission, the agent must procure an offer within the terms of the listing agreement; however, if the seller consents to a sale on terms different than those in the listing agreement, the broker is nevertheless entitled to his commission.

The Utah Supreme Court held in Ogden Savings & Trust v. Blakely, (Utah) 66 Utah 229, 241 P 221, that a commission to a broker-plaintiff should be allowed despite the fact

that the purchaser changed his mind and stopped payment on his check after having signed a binding contract. The decision was based upon the proposition that a broker has produced a "ready, willing and able" buyer who had entered into an agreement to purchase even though he later repudiated it.

Thus, even though Larry Groover apparently concluded that Doran Hunt was really not interested in closing the deal with him, and requested the return of his earnest money, and even though the earnest money was returned without objection from Doran Hunt, and even though there was apparently some kind of release signed between the parties in connection with the return of the earnest moneys, such should not defeat the right of the real estate broker to his commissions, since there had existed a valid, binding and enforceable agreement between the parties for the sale of the mobile home park in Rock Springs, Wyoming.

CONCLUSION

Hunt Development Company and Groover-Hoffman, Inc. signed a valid and binding agreement on November 9, 1979. But for Doran Hunt's evasive and obstructing conduct, Groover-Hoffman, Inc. would have been the owners of the Grandview Mobile Home Park in Rock Springs, Wyoming.

Doran Hunt failed to perform his contractual obligations in good faith by not allowing Larry Groover an adequate site inspection and inspection and verification of

the financial records and books within the time agreed upon.

The case law in the State of Utah suggests that under the facts of this case the broker is entitled to a commission having procured a ready, willing and able purchaser whose ability to perform is "conclusively presumed" as a result of Doran Hunt signing the Earnest Money Agreement with Groover-Hoffman, Inc.

What actually happened during November, 1979 and early December, 1979 is that Doran Hunt, a real estate broker himself, was working one executed Earnest Money Agreement against another Earnest Money Agreement. This explains why Doran Hunt failed to negotiate in good faith with Larry Groover, and offers some explanation for his evasive behavior. He simply did not want to meet and negotiate with Larry Groover because he had already signed an Earnest Money Agreement with a person named Robert H. Hammond. That Earnest Money Agreement was signed by Robert H. Hammond and Doran Hunt on or about November 8, 1979. This means that at the time he had signed the Earnest Money Agreement with Groover-Hoffman, Inc. on November 9, 1979, he had already entered into a binding contract for the purchase of his mobile home park with a third party. This fact helps to shed light on Doran Hunt's bad faith negotiations with the Plaintiff's buyer.

No matter what Gary Larson did or what ready, willing and able buyer he brought to the closing table, it would have been impossible for Doran Hunt to consummate a

sale with him and the other buyer.

At no time did Doran Hunt meet face to face with Gary Larson's buyer, even though several appointments had been scheduled and broken. Gary Larson was continually encouraged by Doran Hunt and Joan Hunt to bring his buyer to the mobile home park and to continue negotiations. There was never anything said by Doran Hunt which would have given notice to Gary Larson that he was not satisfied with the financial status of the buyer, or that he wanted more information on the financial condition of the buyer before entering into a closing.

This Court should order the matter remanded to the trial court with a finding that the trial court erred in its finding that the real estate broker was not entitled to his commission, and order the court to make a finding as to the amount of the commission that is due the broker.

DATED this 3rd day of November, 1987.

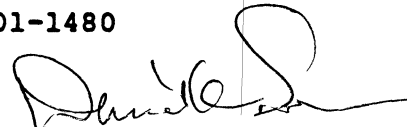


DAVID K. SMITH, ESQ.
Attorney for Plaintiff/Appellant
BARNUM-BROADBENT REAL
ESTATE COMPANY
Suite 300
6925 Union Park Center
Midvale, Utah 84047
Telephone: (801) 566-3373

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Brief of Plaintiff/Appellant, Barnum Broadbent Real Estate Company, a dissolved partnership to counsel for the Defendants/Appellants by placing four copies thereof, postage prepaid, in the United States Mails this 3rd day of November, 1987 addressed as follows:

DAVID R. OLSEN, ESQ.
CHARLES P. SAMPSON, ESQ.
SUITTER, AXLAND, ARMSTRONG & HANSON
Attorneys at Law
175 South West Temple
Seventh Floor
Salt Lake City, Utah 84101-1480



DAVID K. SMITH, ESQ.

ADDENDUM

- A. Letter of Agreement for Payment of Commission
- B. Earnest Money Receipt and Offer to Purchase
dated November 9, 1979
- C. Promissory Note
- D. Groover-Hoffman, Inc. Check for \$5,000.00
- E. Receipt
- F. Earnest Money Receipt and Offer to Purchase
from Carlyle Group
- G. Letter Offer dated November 8, 1979 from
Robert H. Hammond
- H. Exerpts from testimony of Gary Larson
- I. Exerpts from testimony of Larry Groover
- J. Findings of Fact and Conclusions of Law
- K. Notice of Entry of Judgment and Judgment
- L. Notice of Appeal

Barnum Broadbent

REAL ESTATE COMPANY

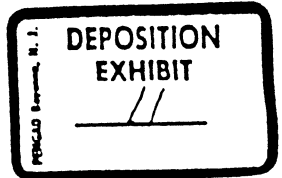
2146 HIGHLAND DRIVE, SALT LAKE CITY, UT. 486-2321

R4106



EXHIBIT "A"

November 2, 1979



LETTER OF AGREEMENT FOR PAYMENT OF COMMISSION

This is an agreement between Gary Larson with Barnum and Broadbent Real Estate Company, and Doran Hunt or Hunt Development Company Inc..

It is agreed that Barnum and Broadbent shall receive a 3% commission on the total sales price of the Grandview Mobile Home Park in Rock Springs, Wyoming, should they provide a purchaser, who may in the future consummate the purchase of this mobile park.

This agreement shall apply to any parties located by Barnum and Broadbent or their Associates during the next six months, beginning the date of this agreement, who may at any time in the future finalize the purchase agreement on said property, if at such time property has not been sold by a party or parties not introduced to seller by Barnum & Broadbent or their Associates.

11-2-79
DATE

Gary Larson
GARY LARSON

11/2/79
DATE

Doran R. Hunt
DORAN HUNT/AUTHORIZED TO SIGN FOR HUNT
DEVELOPMENT COMPANY

This agreement also includes the sale of all trailers on said property owned by Doran and Joan Hunt, sale price to be negotiated.

11-2-79

Gary Larson
Joan R. Hunt

EXHIBIT "B"



EARNEST MONEY RECEIPT AND OFFER TO PURCHASE

This may be a legally binding form. If not understood seek other advice

 SALES OFFICE: BARNUM & BROADBENT REAL ESTATE CO. SALT LAKE CITY Date: November 9 1979

 In consideration of your agreement to use your efforts to present this offer to the Seller, the Groover-Hoffmann Inc.
 hereby deposit with you as earnest money the sum of \$5,000.00, Five thousand dollars and no/100 DOLLARS
 in the form of Company Check Promissory note to be exchanged for check on or before 11/16th, 1979
 to secure and apply on the purchase of the property situated at: Grandview Mobile Home Park, trailers, and other personal
property.
1700 Swanson Drive, Rock Springs Wyoming.

 Rock Springs City Sweetwater County, State of Wyoming
 including any of the following items if at present attached to the premises: Plumbing and heating fixtures and equipment including shower and all units, water heaters, and boilers, except
 light fixtures including bulbs, bathroom fixtures, roller shades, curtain rods and fixtures, window and door screens, shutters, all shrubs and trees, and any other fixtures
 except NONE

 The following personal property shall also be included in part of the property purchase: Buyers also agree to purchase. For an additional
sum of approximately \$14,000.00 per trailer, all remaining trailers, plus an additional
amount to be negotiated prior to closing, for the purchase of other personal property which

 The total purchase price of \$3,250,000.00, Three million two hundred fifty thousand dollars DOLLARS
 shall be payable as follows: \$5,000.00 which represents the aforementioned deposit, receipt of which is hereby acknowledged by you:
None when offer approved then: \$595,000.00 on delivery of deed or final contract of

 sale which shall be on or before January 9th 1980 and \$29,178.78 cash down payment
one month after date of closing. This is an offer of cash downpayment being made subject
to the following: 1) Buyer has 30 days to inspect site and verify bookkeeping to buyers
satisfaction. 2) If it becomes necessary, seller agrees to give buyer a 30 day extension
on the full amount of downpayment with the understanding that a minimum of \$200,000.00 will
be paid to the seller by January 9th, 1980.

 until the balance of \$2,650,000.00 together with interest is paid; provided, however, that buyer at his option, at any time, may pay amounts in excess of the monthly
 payments upon the unpaid balance, subject to the restrictions of any mortgage or contract by the buyer herein assumed. Interest at 12 % per annum on the unpaid portions of the
 purchase price to be included in the prior-paid payments and shall begin as of date of possession which shall be on or before January 9 1980. At risk of loss and destruction
 of property, and expenses of insurance shall be borne by the seller until date of possession at which time property taxes, rent, insurance, interest and other expenses of the property shall be
 prorated as of date of possession. All other taxes and all assessments, mortgages, charges and other taxes, encumbrances or charges against the property of any nature shall be paid by
 the seller except: NONE

 The following special improvements are included in this sale: Sewer ☐ - Connected ☐ Septic Tank and/or Compost ☐ Sidewalk ☐ Curb and Gutter ☐ Sprinkler System Paving
☐ Sprinkler System Lighting ☐ Culinary Waste (City) ☐ Other Community System ☐ Connected ☐ Sewer ☐ (Legend: Y/N (a) No (a))
 Contract of Sale or instrument of conveyance to be made on the approved form of the Utah Dept. of Business Regulation in the name of
to be determined at time of closing.

 This payment is received and offer is made subject to the written acceptance of the seller entered herein within (5) Five days from date hereof, and subject to
 approved the return of the money herein deposited shall render this offer null and void. In the event the offer is not accepted, the money herein deposited shall be returned to the buyer.
 In the event the purchaser fails to pay the balance of said purchase price or complete said purchase in whole provided, the amount paid herein shall, at the option of the seller,
 be retained as liquidated and agreed damages.

 It is understood and agreed that the terms written in this receipt constitute the entire Preliminary Contract between the purchaser and the seller, and that no verbal statement made by
 anyone relative to this transaction shall be construed to be a part of this transaction unless incorporated in writing herein. It is further agreed that execution of the final contract shall
 discharge the Earnest Money Receipt and Offer to Purchase.

BARNUM & BROADBENT REAL ESTATE CO. Agent Henry Hoffman
 We do hereby agree to carry out and fulfill the terms and conditions specified above, and the offer agrees to furnish good and adequate title WARRANTED
 MONEY money of this insurance in the name of the purchaser and to make final conveyance by warranty deed or no other
 in the event of sale of other than real property, seller will provide evidence of title or right to sell or lease. If other party fails to do so, he agrees to pay all expenses of enforcing this agree-
 ment, or of any right arising out of the breach thereof, including a reasonable attorney's fee.

 The seller agrees in consideration of the efforts of the agent in procuring a purchaser, to pay the agent a commission of 3% of personal and real property
 in the event either has entered into a binding contract with any other agent and said contract is previously effective, this paragraph will be of no force or effect.

 DATE 11/9/79 DATE 11/9/79 DATE 11/9/79
 SELLER Henry Hoffman SELLER Henry Hoffman PURCHASER Henry Hoffman

 * may include, but shall not be limited to, the sales office, street sander, snow plow, and
 service trucks. Total of these items to be on a separate 10 year contract at 144 A.P.R.
 interest.

 DATE 11/9/79 DATE 11/9/79 DATE 11/9/79
 SELLER Henry Hoffman SELLER Henry Hoffman PURCHASER Henry Hoffman

 RECEIPT
 I hereby acknowledge the receipt of the sum of \$5,000.00 Five thousand dollars and no/100 DOLLARS
 as earnest money for the purchase of the property situated at: Grandview Mobile Home Park, trailers, and other personal
property.
 I hereby agree to use my efforts to present this offer to the Seller, the Groover-Hoffmann Inc.
 to secure and apply on the purchase of the property situated at: Grandview Mobile Home Park, trailers, and other personal
property.
 1700 Swanson Drive, Rock Springs Wyoming.

 DATE 11/9/79 DATE 11/9/79 DATE 11/9/79
 SELLER Henry Hoffman SELLER Henry Hoffman PURCHASER Henry Hoffman

 DATE 11/9/79 DATE 11/9/79 DATE 11/9/79
 SELLER Henry Hoffman SELLER Henry Hoffman PURCHASER Henry Hoffman

 DATE 11/9/79 DATE 11/9/79 DATE 11/9/79
 SELLER Henry Hoffman SELLER Henry Hoffman PURCHASER Henry Hoffman

 DATE 11/9/79 DATE 11/9/79 DATE 11/9/79
 SELLER Henry Hoffman SELLER Henry Hoffman PURCHASER Henry Hoffman

 DATE 11/9/79 DATE 11/9/79 DATE 11/9/79
 SELLER Henry Hoffman SELLER Henry Hoffman PURCHASER Henry Hoffman

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 SELLER Henry Hoffman SELLER Henry Hoffman PURCHASER Henry Hoffman

 DATE 11/9/79 DATE 11/9/79 DATE 11/9/79
 SELLER Henry Hoffman SELLER Henry Hoffman PURCHASER Henry Hoffman

EXHIBIT "C"

FOR VALUE RECEIVED, the undersigned promise(s) to pay to BARNUM AND BROADBENT Real Estate Co.
or order, Five thousand dollars and no/100 DOLLARS, (\$ 5,000.00),
together with interest from date at the rate of NONE per cent, (0 %) per annum on the unpaid balance, payable as
follows, viz:

In full on or before Friday November 16, 1979.

in lawful money of the United States of America, negotiable and payable at the office of Barnum and Broadbent
Real Estate Co.

without defalcation or discount. All payments hereinabove provided for shall be applied first on accrued interest and balance to
reduction of principal. Any installments of principal and interest not paid when due shall, at the option of the legal holder
hereof, bear interest thereafter at the rate of none per annum until paid.

In case of default in the payment of any installment of principal or interest as herein stipulated, then it shall be optional
with the legal holder of this note to declare the entire principal sum hereof due and payable; and proceedings may at once be
instituted for the recovery of the same by law, with accrued interest and costs, including reasonable attorney's fees.

The makers and endorsers severally waive presentment, protest and demand; and waive notice of protest, demand and of dis-
honor and non-payment of this note, and expressly agree that this note, or any payment thereunder, may be extended from time
to time without in any way effecting the liability of the makers and endorsers thereof.

This note and the interest thereon is secured by a first mortgage on

*EARNEST MONEY ON THE GRANDVIEW MOBILE
HOME PARK IN ROCK SPRINGS, WYOMING.*

x [Signature]



GROOVER-HOFFMAN TRUST NOV 26 1979

111

U. BOX 151258
SALT LAKE CITY, UTAH 84115

Pay to the order of *Commercial Security Bank*

Five Thousand Dollars

Nov 19 1979

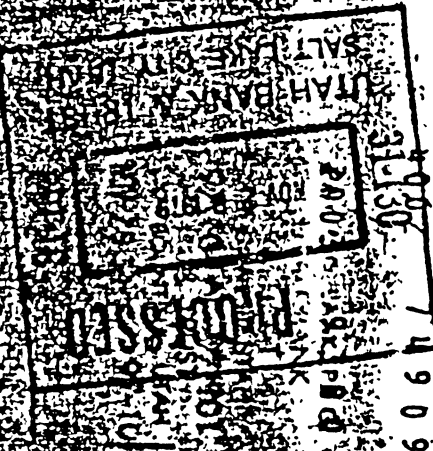
CSB Commercial Security Bank
MORRIS AVENUE
MORRIS, UTAH 84404

For Cash *Pay* *Member*

1124001707 41 11228.2 70 0000500000

2 NO. 79 30

FRS SALT LAKE CITY
PAY ANY BANK
1240-0031



UTAH BANK & TRUST COMPANY
SALT LAKE CITY, UTAH
FOR DEPOSIT ONLY

EXHIBIT "E"

[illegible]

Safeguard
FORM NO. LCR-CD-5
TO ORDER
CALL YOUR LOCAL
DISTRIBUTOR

DEPOSITION
EXHIBIT
8

CR 10, BARNUM & BROADBENT REAL ESTATE CO. SALT LAKE CITY, UTAH, NOVEMBER 28, 1979

the consideration of your agreement to sell your efforts to present this offer to the Buyer, name Carlyle Group
or check with you as earnest money the sum of \$ 25,000.00, Twenty-five thousand dollars and no/100 DOLLARS
a form of Company Check
and and apply on the purchase of the property situated at Grandview Mobile Home Park, trailers, and other personal
PROPERTY.
1700 Swanson Drive, Rock Springs Wyoming.

Rock Springs City Swanwater County State of Wyoming
using any of the following items if at present attached to the premises: Plumbing and heating fixtures and equipment including sewer and all tanks, water heaters, and burners, and/or
fixtures including built-in, bathroom fixtures, roller shades, curtain rods and fixtures, vacation blinds, window and door screens, blankets, all shrubs and trees, and any other fixtures
of NONE

including personal property shall also be included as part of the property purchased. Buyers also agree to purchase, for an additional
sum of approximately \$14,000.00 per trailer, all remaining trailers, plus an additional
amount to be negotiated prior to closing, for the purchase of other personal property which

The total purchase price of \$ 3,250,000.00, Three million two hundred fifty thousand dollars DOLLARS
to be paid as follows: \$ 25,000.00 which represents the above-described deposit, receipt of which is hereby acknowledged by you.
None when offer approved date: 575,000.00 on delivery of deed or final contract of

which shall be on or before 30 working days from receiving preliminary title report 28,178.78 per month commencing
This offer is being made subject to the following: buyer has ten working days from receipt
of all documentation to inspect site and
records to buyers satisfaction after which a contract mutually acceptable to both buyer
and seller will be drawn up. This is second place to offer with Groover-Hoffmann Inc.,
AND this offer shall go into effect the day after the Groover-Hoffmann, Inc. offer
becomes null and void.

The balance of \$ 2,650,000.00 together with interest to paid; provided, however, that buyer at his option, at any time, may pay amounts in excess of the maturity
herein upon the unpaid balance, subject to the limitations of any mortgage or contract by the buyer herein assumed, interest of 12 % per annum on the unpaid principal of the
herein to be included in the payments and shall begin as of date of possession which shall be on or before 30 working days from receiving PTR
property and business of business shall be born by the seller until date of possession at which time property taxes, rents, insurance interest and other expenses of the property shall be
and as of date of possession, all other taxes and all assessments, mortgages, charges and other liens, encumbrances or charges against the property of any nature shall be paid by
seller except: NONE

The following listed improvements are included in this sale: Sewer ☐ -Concrete ☐ Septic Tank and/or Cesspool ☐ Sidewalk ☐ Curb and Gutter ☐ Sanitary Street Paving
Sanitary Street Lighting ☐ Culinary water (City ☐ Other Community System ☐ Concrete ☐ Private ☐ (Specify Yes (X) No (X))
Tract of Sale or instrument of conveyance to be made on the approved form of the Utah Dept. of Business Regulation in the name of
to be determined at time of closing

This payment is required and offer is made subject to the written acceptance of the other interested parties within 10 days from date hereof, and unless so
over the return of the money herein deposited shall cancel this offer without damage to the undersigned agent.
In the event the purchase fails to any the balance of said purchase price or complete said purchase is herein provided, the amounts paid herein shall, at the option of the offer,
remain as interest and agreed damages.

It is understood and agreed that the terms written in this contract constitute the entire Preliminary Contract between the purchaser and the seller and that no verbal statement made by
any relative to this transaction shall be considered to be a part of this transaction unless incorporated in writing herein. It is further agreed that execution of the final contract shall
give this Contract hereby Rejected and Offer to Purchase.

BARNUM & BROADBENT REAL ESTATE CO. Agent Gary Refusor
as hereby agree to carry out and fulfill the terms and conditions specified above, and the offer agrees to furnish good and marketable title with interest brought to date as of date of
a policy of title insurance in the name of the purchaser and to make that conveyance by warranty deed or no other
in event of loss of other than real property, agent will provide evidence of loss or right to sell or lease. If either party fails to do so, he agrees to pay all expenses of enforcing this agree-
ment or of any right arising out of the breach thereof, including a reasonable attorney's fee.
The offer agrees in consideration of the efforts of the agent in procuring a purchaser to pay said agent a commission of 3% of personal and real property.
In event either has entered into a listing contract with any other agent and said contract is presently effective, this paragraph will be of no force or effect.

DATE _____ SELLER _____ PURCHASER _____
DATE _____ SELLER _____ PURCHASER _____

* may include, but shall not be limited to, the sales office, street sander, snow plow, and
service trucks. Total of these items to be on a separate 10 year contract at 14% A.P.R.
interest.

11/28/79 DATE Hoyt R. Hunt SELLER X PURCHASER
11/28/79 DATE 11/28/79 SELLER 11/28/79 PURCHASER

RECEIPT
I acknowledge receipt of a final copy of the foregoing agreement bearing all signatures
Name _____ Date _____
I hereby received a final copy of the foregoing agreement bearing all signatures of the seller and the buyer
Name _____ Date _____
DEPOSITION
EX-311

EXHIBIT "F"

A



EARNEST MONEY RECEIPT AND OFFER TO PURCHASE

This may be a legally binding form, if not understood seek other advice

1 TO BARNUM BROADBENT REAL ESTATE SALT LAKE CITY Utah FEBRUARY 11 19 80
 Name of Broker Company THE CARLYLE GROUP

2 IN CONSIDERATION OF your agreement to use your efforts to present this offer to the Seller, I/we
 3 hereby deposit with you as earnest money the sum of \$ 25,000.00 , Twenty-five thousand dollars and no/100 DOLLARS
 4 in the form of Company Check

5 to secure and apply on the purchase of the property situated at
property 1700 Swanson Drive Rock Springs, Wyoming

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 9
 10 Rock Springs City Sweetwater County State of Wyoming

11 including any of the following items if at present attached to the premises: Plumbing and heating fixtures and equipment including pipes and all tanks, air or heat pumps and electric
 12 light fixtures including bulbs, bathroom fixtures, other shades, curtain rods and fixtures, window blinds, and other screens, drapery, all shrubs and trees and any other fixtures
 13 except None

14 The following personal property shall also be included as part of the property purchased: Buyers agree to purchase the 83 remaining trailer
 15 for the sum of \$1,100,000.00 (one million-one hundred thousand dollars) to be paid in
 16 monthly installments of \$13,202.00 on a 12 1/2 yr. contract, commencing April 1, 1980.

17 The total purchase price of \$ 3,100,000.00 , Three million one hundred thousand dollars and no/100 DOLLARS
 18 shall be payable as follows: 25,000.00 which represents the aforementioned deposit receipt of which is hereby acknowledged by you
 19 None when seller approves sale \$ 75,000.00 on delivery of deed or final contract of

20 sale which shall be on or before March 31 19 80 and \$ 400,000.00 on closing which XXXXXXXXXXXX
 21 shall be within 30 days of acceptance of this offer by the seller. This is a contract
 22 sale with the following amortization: 1) at 1 1/4 straight int. monthly payments of
 23 \$27,811.00 for 2 yrs., and at 12 1/2 yrs., \$27,381.00 for the next 15 yrs., at which
 24 time the remaining balance of \$1,908,667 shall become due and payable in full See
 25 attached addendum (Exhibit A) This offer is based upon the
 26 verbal agreement made over the phone between buyer and seller.

27 until the balance of \$ 0 together with interest is paid; provided however that buyer at his option may pay amounts in excess of the monthly
 28 payments upon the unpaid balance subject to the limitations of any mortgage or contract by the buyer herein assumed interest at 12 1/2 yrs. % per annum on the unpaid portions of it

29 purchase price to be included in the specified payments and shall begin as of date of possession which shall be on or before March 31 19 80 All risk of loss and destruction
 30 of property and expenses of insurance shall be born by the seller until date of possession at which time property taxes, taxes, insurance, interest and other expenses of the property shall be
 31 prorated as of date of possession. All other taxes and all encumbrances, mortgages, chattel loans and other liens, encumbrances or charges against the property of any nature shall be paid by
 32 the seller except None

33 The following special improvements are included in this sale: ☒ Sewer ☒ Connected ☒ Septic Tank and/or Cesspool ☐ Sidewalk ☐ Curb and Gutter ☒ Special Street Pavt
 34 ☒ Special Street Lighting ☒ Culinary Water (City) ☐ Other Community System ☐ Connected ☐ Private ☐ (Legend: Yes (x) No ())

35 Contract of Sale or Instrument of conveyance to be made on the approved form of the Utah Dept. of Business Regulation in the name of
 36 The Carlyle Group

37 This payment is received and offer is made subject to the written acceptance of the seller endorsed hereon within (10) Ten days from date hereof and until
 38 approval the return of the money herein received shall cancel this offer without damage to the undersigned agent

39 In the event the purchaser fails to pay the balance of said purchase price or complete said purchase as herein provided the amounts paid hereon shall at the option of the seller
 40 be retained as liquidated and agreed damages

41 It is understood and agreed that the terms written in this receipt constitute the entire Preliminary Contract between the purchaser and the seller, and that no verbal statement made
 42 anyone related to this transaction shall be construed to be a part of this transaction unless incorporated in writing herein. It is further agreed and understood that the final contract in
 43 adequate form, Earnest Money Receipt and Offer to Purchase

44 BARNUM BROADBENT REAL ESTATE CO. Agent by Shay D. Larson
 Broker Company

45 We do hereby agree to carry out and fulfill the terms and conditions specified above, and the seller agrees to furnish good and marketable title when delivery is brought to date or at Seller's
 46 option a policy of title insurance in the name of the purchaser and to make final conveyance by warranty deed or no other

47 In the event of sale of other than real property seller will provide evidence of title or right to sell or lease. If either party fails to do so he agrees to pay the expenses of enforcing this up
 48 hold or of any right arising out of the breach thereof including a reasonable attorney's fee

49 The seller agrees in consideration of the efforts of the agent in procuring a purchaser to pay said agent a commission of 3% of personal & real propo
 50 in the event seller has entered into a binding contract with any other agent and said contract is previously effective this paragraph will be null and void

51 X 2/27/80 DATE Seller X [Signature] Purchaser

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Exhibit 5

Donald H. Barnett
MHP Sales & Inv Counselor
505 North Tustin , Suite 190
Santa Ana California 92705

2308 Brookhill Drive
Camarillo, California
93010
November 8 , 1979

Dear Mr. Barnett :

I make the following offer to purchase the ^{305 ANN}~~228~~ Space mobile home park in Rock Springs Wyoming on which you sent me the descriptive data:

Price- \$ 3, ~~250~~,000 ^{RNN}

Down Payment - \$ 625,000

Financing - Owner carry balance on 20 year self amortizing loan

Purchase at this price is contingent upon a determination that the park's income, expenses , and debt service (self-amortizing) will produce 11 % spendable income (Cash - on - cash) for the Buyer commencing at close of escrow.

The purchase also is contingent upon the following:

- A- Seller to cooperate with Buyer, at no expense to seller , in the accomplishment of a 1031 exchange of the Buyer's presently owned property. An exchange and simultaneous sale of Buyer's property is envisioned
- ~~B-~~ Sales commission on Seller's property to be paid by Seller.
Sales commission on Buyer's property to be paid by Buyer.
- C- Escrow costs to be shared equally by Buyer and Seller.
- D-Buyer to examine and approve income and expense records of Seller.
- E- Seller to provide preliminary and final title reports and policy of title insurance at Seller's expense. Buyer to approve/disapprove within ten days.
- F- Escrow instructions satisfactory to both Seller and Buyer to be prepared prior to opening escrow. Escrow instructions shall be in the form of an exchange agreement which will be prepared at Buyer's expense.
- G- Taxes , insurance premiums , income , and expenses to be prorated as of the close of escrow.
- H- Buyer to inspect and approve the condition of the property.
- I- Seller to warrant that the property meets all applicable state and local codes and ordinances.

Upon acceptance of this offer , the parties involved in this transaction agree to exercise due diligence to complete it; however, should any party acting in good faith be unable to complete the transaction due to a cloud on the title of the property he is conveying , or for whatever other reason he cannot in good faith perform , it is agreed that the defaulting party shall be liable for no damage other than escrow and title work already performed.

This offer is valid until 12: Noon , ^{January 11, 1981} ~~November 15, 1979~~ UH/B
by phone

Enclosed herewith is a check in the amount of \$ 10,000 which shall become a part of the down payment upon acceptance of this offer by the Seller and after completion of escrow instructions satisfactory to Buyer and Seller. The check shall not be cashed until opening of escrow.

If you have any questions , please call me.

Very truly yours ,

Robert H. Hammond
Robert H. Hammond

Hunt Development Co.
By Robert Hunt

1 TOOELE, UTAH; TUESDAY, FEBRUARY 11, 1986; 1:00 P.M.

2 P R O C E E D I N G S

3 GARY LARSON,

4 RESUMED THE WITNESS STAND AND CONTINUED

5 UNDER DIRECT EXAMINATION AS FOLLOWS:

6 DIRECT EXAMINATION (CONT'D)

7 BY MR. SMITH:

8 Q MR. LARSON, BEFORE WE TOOK THE NOON BREAK, I WAS
9 ASKING YOU ABOUT MR. GROOVER'S ABILITY AS YOU HAD BEEN ABLE
10 TO DETERMINE HIS ABILITY PRIOR TO HIS SIGNING THE EARNEST
11 MONEY AGREEMENT ON THE 9TH OF NOVEMBER.

12 A RIGHT.

13 Q WHAT DID YOU KNOW OF HIS QUALIFICATIONS PRIOR TO
14 THAT DATE?

15 A I'M GLAD YOU ASKED, DAVE, BECAUSE LARRY GROOVER
16 WAS INTRODUCED TO ME AS AN ATTORNEY, AND I CAME TO FIND OUT
17 THE FACT THAT WHENEVER HE CONDUCTS A SEMINAR, HE DID THEN
18 AND HAS TO THIS DAY, HE ALWAYS IDENTIFIES HIMSELF AS AN
19 ATTORNEY, AS A CERTIFIED LIFE UNDERWRITER AND ALSO AS A
20 CERTIFIED FINANCIAL PLANNER. HE IS A MEMBER OF THE FLORIDA
21 STATE BAR, FROM WHAT I UNDERSTAND.

22 THE THING THAT I HAD OBSERVED DURING THAT PERIOD
23 OF TIME WAS HIS INCREDIBLE TALENT FOR RAISING MONEY. NOW,
24 BASICALLY HE WAS INVOLVED IN MANY PROGRAMS THAT WERE
25 SOMEWHAT RELATED, BUT HE BROUGHT THEM ALL INTO A FOCAL

1 POINT, INTO A COMPANY CALLED BALANCE FINANCIAL MANAGEMENT.

2 THIS IS WHY IT'S DIFFICULT, BECAUSE --

3 MR. OLSEN: OBJECTION. WE NEED FOUNDATION.

4 BALANCE FINANCIAL MANAGEMENT IS SOME TIME AFTER THE SALE.

5 I OBJECT TO THIS TESTIMONY WITHOUT FURTHER FOUNDATION,

6 YOUR HONOR.

7 THE COURT: THE OBJECTION IS SUSTAINED.

8 Q (BY MR. SMITH) I ONLY WANT YOU TO RELATE WHAT
9 YOU KNEW AT THAT TIME.

10 WAS HE INVOLVED AT THAT TIME IN BALANCE FINANCIAL
11 MANAGEMENT?

12 A BALANCE FINANCIAL MANAGEMENT WAS AN EVENTUAL
13 PRODUCT OF WHAT HE WAS DOING AT THAT TIME. AT THIS
14 PARTICULAR TIME HE WAS WORKING FOR A COMPANY CALLED I. L.
15 WILLIAMS INSURANCE, AND I. L. WILLIAMS WAS A FORMER
16 FOOTBALL COACH FROM ATLANTA, GEORGIA, THAT HAS COMPLETELY
17 REVOLUTIONIZED THE INSURANCE INDUSTRY. IT BASICALLY IS A
18 CONCEPT THAT STARTED IN A MULTI-MARKETING PLAN BACK
19 SEVERAL YEARS PRIOR TO THIS TIME, WAS WAKING THE PUBLIC UP
20 TO THE VALUE OF WHOLE-LIFE POLICIES TO INVEST OR CONVERT
21 FROM WHOLE LIFE TO TERM AND INVEST THE DIFFERENCE.

22 NOW, THAT AT THAT TIME WAS AS FAR AS I. L.
23 WILLIAMS HAD --

24 Q NOW, WAS MR. GROOVER INVOLVED IN THAT ORGANI-
25 ZATION SOMEHOW AT THAT TIME?

1 A YES, HE WAS. AND IN FACT, WHAT I OBSERVED AT
2 THESE SEMINARS, HE HAD SOMEWHERE -- AND HE TOLD ME IT WAS
3 ABOUT 180 CLIENTS AT THAT TIME THAT WERE IN THE PROCESS
4 OF COMING INTO THE I. L. WILLIAMS MARKETING CONCEPT.

5 NOW, WHAT I. L. WILLIAMS DID, LIKE I SAY, WAS
6 CONVERTING FROM WHOLE LIFE TO TERM AND INVESTING THE
7 DIFFERENCE.

8 WHAT LARRY DID, BECAUSE HE ALREADY HAD SUCH AN
9 INCREDIBLE TRACK RECORD WITH INVESTMENTS, WAS THE COMPLETE
10 PROGRAM OF TAKING THE MONEY THEY WERE SAVING AND PUTTING
11 IT INTO VARIOUS TYPES OF SECURITIES AND INVESTMENTS, REAL
12 ESTATE, TRUSTS, PETRO LEWIS. THAT YEAR HE SOLD OVER A
13 MILLION DOLLARS IN DIAMONDS.

14 MR. OLSEN: OBJECTION. FOUNDATION, AND SECONDLY
15 I MOVE TO STRIKE THE LAST ANSWER.

16 THE COURT: THE OBJECTION IS SUSTAINED.

17 Q (BY MR. SMITH) DID HE TELL YOU THAT HE WAS
18 INVOLVED IN DIAMONDS?

19 A YES, HE DID.

20 Q AND DID HE TELL YOU WHAT HE HAD SOLD THAT YEAR?

21 A THAT'S RIGHT.

22 Q AND WAS THAT YOUR TESTIMONY, ABOUT A MILLION
23 DOLLARS' WORTH OF BUSINESS?

24 A THAT'S WHAT I UNDERSTOOD. IN FACT, I PERSONALLY
25 WITNESSED, AS I TESTIFIED EARLIER, AT THE HOTEL UTAH.

1 THAT IS SOMETHING I VIVIDLY REMEMBER. I WAS IN THE
2 BALLROOM. THE PLACE WAS PACKED AND THESE WERE HIS CLIENTS
3 AND HE WAS DOING AN ANNUAL REPORT ON THEIR DIAMOND
4 INVESTMENT, AS WELL AS INTRODUCING THEM TO THE NEW
5 PRODUCTS, APPARENTLY GREECE, ROME AND EGYPTIAN ARTIFACTS,
6 COLLECTIBLES THAT HE WAS QUITE EXCITED ABOUT.

7 Q AFTER HE SIGNED THE EARNEST MONEY AGREEMENT, DID
8 YOU HAVE AN OPPORTUNITY TO OBSERVE WHETHER OR NOT HE MADE
9 ANY ATTEMPT TO RAISE ANY OF THIS MONEY?

10 A WELL, THROUGHOUT THE 30-DAY PERIOD I KNEW THAT
11 HE WAS ACTIVELY WORKING ON THAT. IN FACT, HE WAS -- THE
12 FACT THAT HE WAS A FEW DAYS LATE ON HIS EARNEST MONEY, HE
13 WAS OUT OF TOWN, AND I KNOW HE WAS LOOKING AT A PROJECT
14 CALLED TIMBER LEAF THAT HE ENDED UP CONSUMMATING A
15 \$10 MILLION SALE SHORTLY RIGHT AFTER OUR EARNEST MONEY
16 WAS NOT ABLE TO BE CONSUMMATED.

17 Q WHERE WAS THE TIMBER LEAF PROJECT? DO YOU KNOW?

18 A I KNOW IT WAS SOMEWHERE CLOSE TO DENVER; DENVER,
19 COLORADO.

20 ON THE ONE TRIP THAT WE MADE UP TO ROCK SPRINGS
21 WE STOPPED AT A CAR DEALERSHIP, WHICH WAS ONE OF THE
22 CLIENTS, AND I KNOW THAT MAN COMMITTED SOMETHING LIKE
23 \$50,000. HE TOLD ME THAT HE WOULD HAVE SOMEWHERE CLOSE TO
24 SIX HUNDRED THOUSAND, HE WOULD BE ABLE TO RAISE THAT AMOUNT
25 OF MONEY WITH A VERY SMALL GROUP OF INVESTORS.

1 MR. OLSEN: I OBJECT TO THE TESTIMONY. THE
2 WITNESS IS NOT RESPONSIVE TO THE QUESTION. HE HAS TALKED
3 ABOUT AN UNIDENTIFIED MAN WHO COMMITTED \$50,000 AND I MOVE
4 TO STRIKE THAT AS A NONRESPONSIVE ANSWER.

5 MR. WHITE: THE QUESTION WAS DO YOU KNOW WHAT
6 MR. GROOVER'S ABILITIES WERE, AND HE'S SAYING WHAT HE HAS
7 PERSONAL KNOWLEDGE OF.

8 THE COURT: THAT'S HEARSAY, ISN'T IT?

9 MR. WHITE: HE HAS PERSONAL KNOWLEDGE. HE WAS
10 THERE.

11 THE COURT: YOU CAN ASK, DO YOU HAVE PERSONAL
12 KNOWLEDGE OF THE FACT THAT THAT AUTOMOBILE DEALER COMMITTED
13 \$50,000.

14 THE WITNESS: I WAS THERE WITH LARRY GROOVER --
15 RATHER, LARRY GROOVER WAS WITH ME WHEN WE WENT TO ROCK
16 SPRINGS AND WE STOPPED AT THE CAR DEALERSHIP. I WAS NOT
17 IN THERE WITH HIM, BUT I KNOW HE WAS IN THERE 45 MINUTES.

18 THE COURT: SO, THAT WOULD BE HEARSAY.

19 THE WITNESS: ALL RIGHT. WELL, A LOT OF WHAT I
20 HAVE TO REPORT OBVIOUSLY IS WHAT LARRY GROOVER HAS TOLD
21 ME COMPOUNDED BY WHAT I WITNESSED AT HIS SEMINARS AND THE
22 NUMBERS OF PEOPLE THAT WERE THERE.

23 Q (BY MR. SMITH) NOW, PRIOR TO --

24 THE COURT: ONE THING, SEMINARS ARE NOT IN AND
25 OF THEMSELVES -- DO NOT TELL OF A PERSON'S FINANCIAL WORTH.

1 Q (BY MR. SMITH) AFTER THE EARNEST MONEY AGREEMENT
2 WAS SIGNED BY MR. GROOVER, WHEN DID YOU NEXT TALK OR MEET
3 WITH DORAN HUNT?

4 A I CALLED DORAN HUNT TO LET HIM KNOW THAT I HAD AN
5 EARNEST MONEY OFFER, AND WE DECIDED TO MEET ON MONDAY. HE
6 COULDN'T MEET OVER THE WEEKEND, SO WE MET ON MONDAY, THE
7 12TH, AT HIS HOME IN TOOELE.

8 Q DID YOU PRESENT THE EARNEST MONEY TO HIM AT THAT
9 TIME?

10 A YES, I DID.

11 Q AND WHAT DID YOU TELL HIM IN CONNECTION WITH WHAT
12 YOU KNEW OF MR. GROOVER'S ABILITY TO PERFORM?

13 A WELL, I TOLD HIM THE THINGS THAT I HAVE JUST
14 IDENTIFIED, THAT MY KNOWLEDGE OF LARRY WAS -- I HAD KNOWN
15 HIM FOR A MONTH OR SO AND THAT I HAD -- THAT I KNEW THAT
16 HIS ABILITY LIED IN HIS RAISING MONEY THROUGH CLIENTS.

17 NOW, GOING TO A SEMINAR, I AGREE IF IT WAS A
18 SEMINAR, JUST INTRODUCING AND MEETING THE PEOPLE AT THE
19 HOTEL UTAH -- IT WAS IN FACT A MEETING OF CLIENTS THAT HE
20 HAD ALREADY SOLD TO AND HE WAS DOING AN ANNUAL REPORT ON
21 DIAMONDS AS WELL AS INTRODUCING NEW PRODUCTS TO THEM.

22 I CONVEYED THIS TO MR. HUNT, AND MR. HUNT
23 OBVIOUSLY -- THE THING ABOUT IT IS MR. HUNT WAS NOT AN
24 UNSOPHISTICATED CLIENT. HE WAS A BROKER. HE WAS A REAL
25 ESTATE BROKER, AND SO HE KNEW REAL ESTATE AND EVERYTHING

1 IF HE CAN'T RECALL, THEN HE CAN REFER TO THE DEPOSITION,
2 OR WHATEVER HE'S GOING TO REFER TO.

3 MR. WHITE: I WILL HAVE THE RECORD ENTER MY
4 OBJECTION.

5 Q (BY MR. SMITH) WHEN YOU MET WITH HIM, WHAT ELSE
6 DID YOU DO? WHAT ELSE DID YOU SAY TO MR. HUNT CONCERNING
7 WHAT YOU KNEW OF MR. GROOVER'S ABILITY TO --

8 A I BASICALLY TOLD HIM, AS I SAID, ABOUT HIS
9 CREDENTIALS, ABOUT THE TYPE OF ACTIVITIES THAT LARRY
10 WAS DOING, ABOUT THE FACT THAT HE HAD A LARGE CLIENTELE
11 THAT HE WORKED WITH, THAT HE SOLD A LOT OF LIFE INSURANCE,
12 THAT HE HAD SOLD OVER A MILLION DOLLARS IN DIAMONDS AND THAT
.. 13 HIS ABILITY LIED IN HIS HAVING THESE CLIENTS IN PLACE THAT
14 WERE READY TO, IN A VERY SHORT TIME, ACCORDING TO LARRY
15 PROVIDE AMOUNTS OF MONIES.

16 THEN I DO REMEMBER TELLING MR. HUNT THAT, LOOK,
17 WE HAVE 30 DAYS AND THE PROOF OF THE PUDDING IS GOING TO BE
18 IF HE HAS THE MONEY AT THE LENGTH OF THAT TIME. MR. HUNT
19 SEEMED TO BE HAPPY WITH THAT.

20 Q WHAT WAS HIS RESPONSE TO THAT?

21 A HIS RESPONSE WAS OBVIOUS. HE SIGNED THE EARNEST
22 MONEY.

23 Q DID HE SAY ANYTHING?

24 A HE SAID, WELL, I HOPE YOU CAN PERFORM, OR
25 SOMETHING TO THAT EFFECT, I GUESS.

1 Q AND THEN HE SIGNED IT?

2 A HE SIGNED THE EARNEST MONEY, YES.

3 Q WAS THERE ANYTHING THAT YOU HELD BACK FROM

4 TELLING MR. HUNT AT THAT TIME THAT YOU KNEW ABOUT

5 MR. GROOVER?

6 A NOTHING AT ALL.

7 Q AT THAT TIME DID YOU BELIEVE THAT MR. GROOVER

8 COULD HAVE PERFORMED?

9 A I DID, VERY MUCH SO. YOU'D HAVE TO BE THERE

10 AND WITNESS THE THINGS THAT I DID TO UNDERSTAND WHAT HE

11 WAS ABLE TO DO.

12 Q NOW, WE'RE TALKING ABOUT THE EXHIBIT NO. 6, ARE

13 WE NOT? THIS IS THE DOCUMENT THAT HE SIGNED?

14 A THAT IS CORRECT.

15 Q DOES THAT DOCUMENT REFLECT THE TERMS ON WHICH

16 MR. HUNT HAD PREVIOUSLY INDICATED TO YOU THAT HE WAS

17 WILLING TO SELL THE PARK?

18 A COMPLETELY, TOTALLY.

19 Q THERE'S A MONTHLY AMOUNT THERE THAT IS STATED

20 THERE. HOW DID YOU COME UP WITH THAT MONTHLY PAYMENT?

21 A THE MONTHLY AMOUNT OF \$29,178.78 IS A DERIVATIVE

22 OF A 20-YEAR CONTRACT AT 12 PERCENT ON THE REMAINING

23 BALANCE AFTER THE DOWN PAYMENT.

24 Q YOU TALKED ABOUT THE SALE OF CERTAIN PERSONAL

25 PROPERTY AT THAT TIME. WHAT INFORMATION DID YOU HAVE

1 BEFORE YOU ABOUT THE NUMBER OF TRAILERS THAT WERE THERE
2 THAT WOULD BE SOLD?

3 A THE ONLY INFORMATION I HAD WAS WHAT WAS IN THE
4 SALES PROPOSAL, THAT THERE WERE APPROXIMATELY SOMEWHERE
5 BETWEEN 50 AND 70. THAT WAS ONE OF THE THINGS THAT WE
6 NEEDED TO DETERMINE.

7 Q AND DID MR. HUNT KNOW HOW MANY TRAILERS WERE
8 THERE AT THAT TIME?

9 A NO. THAT WAS PART OF THE DISCOVERY HE WAS GOING
10 TO DO WITH US.

11 Q WHEN WAS THE NEXT MEETING EITHER WITH LARRY
12 GROOVER OR WITH MR. HUNT?

13 A I WILL HAVE TO REFER TO MY NOTES. I KNOW THAT --

14 Q GO AHEAD.

15 A NOT MY NOTES, BUT I CAN REFER TO EXHIBIT 33
16 WHICH IS MY DAILY --

17 THE COURT: SURE.

18 THE WITNESS: HE SIGNED THE EARNEST MONEY AND
19 THE NEXT STEP WAS TO START THE PROCESS OF GETTING THE
20 TWO CONTINGENCIES REMOVED, INSPECTION OF SITE AND
21 INSPECTION OF THE BOOKS. ALSO WE HAD THE MATTER OF THE
22 \$5,000 CHECK THAT WE HAD TO GET FROM LARRY GROOVER.
23 (READS.)

24 OKAY. I BELIEVE OUR NEXT CONTACT WAS THE 19TH.

25 Q (BY MR. SMITH) WHAT HAPPENED ON THE 19TH?

1 LARRY A CHECK. SO, THE ASSUMPTION IS THAT THE CHECK WAS
2 GOOD.

3 Q DID YOU HAVE ANY CONVERSATIONS WITH MR. HUNT
4 ABOUT THE CHECK BEING LATE?

5 A OH, YES.

6 Q WHAT CONVERSATION OR CONVERSATIONS DID YOU HAVE?
7 AND WHEN DID THOSE TAKE PLACE?

8 A I BELIEVE -- AND I DON'T RECALL THE DATE, BUT I
9 KNOW THAT I MENTIONED TO HIM -- IN OUR CONVERSATION I TOLD
10 HIM THAT THE CHECK HAD CAME BACK ON THE 19TH, AND I FINALL'
11 HAD THE CHECK IN HAND AND I SAID FINE, AND HE WAS -- HE
12 WAS HAPPY WITH THAT.

13 Q DID HE SAY ANYTHING TO YOU IN A COMPLAINING WAY
14 ABOUT THE CHECK BEING LATE?

15 A NOT THAT I RECALL.

16 Q DID HE EVER INDICATE TO YOU THAT HE WAS NOT GOING
17 TO HONOR THE AGREEMENT BECAUSE THE CHECK HAD BEEN LATE?

18 A NEVER.

19 Q AFTER YOU RECEIVED THE CHECK ON THE 19TH, WHAT
20 FURTHER COMMUNICATION DID YOU HAVE, IF ANY, WITH EITHER
21 DORAN OR LARRY?

22 A I THINK BOTH LARRY AND MR. HUNT WERE PLANNING ON
23 GOING WITH ME TO ROCK SPRINGS THE NEXT DAY ON THE 20TH,
24 AND DORAN WAS UNABLE TO GO.

25 Q DID HE COMMUNICATE THAT TO YOU?

1 A RIGHT. I CALLED HIM.

2 Q DID HE GIVE YOU A REASON?

3 A I DON'T RECALL THE REASON OTHER THAN THAT HE
4 WAS NOT ABLE TO MAKE IT, WE'D HAVE TO RESCHEDULE IT.

5 Q DID YOU RESCHEDULE?

6 A YES, WE DID.

7 Q WHEN DID YOU RESCHEDULE IT?

8 A WE RESCHEDULED -- I WAS LEAVING THE NEXT DAY
9 FOR CALIFORNIA AND WE RESCHEDULED THAT WHEN I RETURNED
10 ON THE 26TH, WHICH WAS A MONDAY, THAT WE WOULD MEET IN
11 TOOELE ON THE 26TH TO LOOK AT THE BOOKS AND THE NEXT DAY,
12 ON THE 27TH, WE WOULD GO TO ROCK SPRINGS.

13 Q NOW, DID YOU HAVE AN OPPORTUNITY TO COMMUNICATE
14 WITH EITHER MR. GROOVER OR MR. HUNT PRIOR TO YOUR RETURN
15 FROM CALIFORNIA ABOUT YOUR MEETING ON THE 26TH?

16 A WELL, I DID. OF COURSE THE PURPOSE OF MY TRIP,
17 THAT WAS THE OTHER OFFER, AND ON SUNDAY THE 25TH I DID
18 CALL MR. HUNT TO TELL HIM THAT I DID, IN FACT, HAVE AN
19 OFFER AND AT THAT TIME ALSO TO CONFIRM THAT WE WOULD --
20 THAT MR. GROOVER AND I WOULD BE COMING THE NEXT NIGHT TO
21 VISIT OVER TO HIS HOME OR AT HIS OFFICE, I SHOULD SAY, TO
22 MEET WITH HIM. AND HE AGREED TO THAT.

23 I ALSO CALLED LARRY GROOVER IN CALIFORNIA TO
24 CONFIRM THAT HE WAS STILL ABLE TO GO, AND HE WAS, AND WE
25 TRAVELED HOME.

1 Q ON THE 26TH WHAT DID YOU DO?

2 A WELL, ON THE 26TH LARRY GROOVER AND I MADE THE
3 TRIP TO TOOELE AT THE PRESCRIBED TIME WE WERE SUPPOSED TO
4 MEET, AND WE CAME TO MR. HUNT'S OFFICE AND HE WASN'T THERE.
5 I BELIEVE AT THAT TIME IT WAS HIS WIFE THAT WAS THERE AND
6 TOLD US THAT HE WAS UNAVAILABLE.

7 Q DID SHE INDICATE WHY HE WAS UNAVAILABLE?

8 A SHE SAID HE WAS HOME SLEEPING, THAT HE WASN'T
9 FEELING VERY WELL.

10 Q AND I TAKE IT, THEN, YOU DID NOT MEET WITH HIM
11 ON THE 26TH?

12 A NO, I DIDN'T.

13 Q WHAT DID YOU DO TO ATTEMPT TO RESCHEDULE A
14 MEETING THEN WITH HIM AFTER THAT?

15 A WE WERE SUPPOSED TO GO TO ROCK SPRINGS THE NEXT
16 DAY, AND I PHONED HIM AND HE TOLD ME HE WASN'T ABLE TO
17 MAKE IT TO ROCK SPRINGS.

18 Q WHEN DID YOU FIND OUT HE WAS UNABLE TO MAKE IT?

19 A THE NEXT MORNING.

20 Q WHAT DID HE SAY TO YOU OVER THE PHONE?

21 A HE TOLD ME THAT HE WASN'T GOING TO BE ABLE TO
22 MAKE IT, THAT WE SHOULD RESCHEDULE.

23 Q DID HE INDICATE A REASON WHY HE WAS UNABLE TO
24 MAKE IT?

25 A I DON'T RECALL. HAD INDIVIDUAL REASONS AT

1 DIFFERENT TIMES.

2 Q AND THEN WHAT DID YOU DO AFTER THAT?

3 A WELL, I HAD HIM ON THE PHONE. WE DISCUSSED ABOUT
4 THE BACKUP OFFER THAT I HAD FROM RON SINGER, AND I TOLD HIM
5 THAT I NEEDED TO GET WITH HIM AND HAVE HIM SIGN THAT OR
6 LOOK AT IT AND HE ASKED ME TO READ IT TO HIM OVER THE
7 PHONE, AS I RECALL.

8 AND THE REASON I RECALL IT THAT WAY IS BECAUSE
9 I WANTED TO DO A COUNTEROFFER ON THE BACKUP OFFER, AND HIS
10 DIRECTION, AS I RECALL -- RECALL HIS COMMENTS WERE
11 SOMETHING TO THE EFFECT THAT HIS BACKUP OFFER FROM RON
12 SINGER WAS SOMETHING LESS THAN LARRY GROOVER'S OFFER AND
13 HE DIDN'T WANT TO SIGN AN OFFER LESS THAN WHAT HE HAD IN
14 THE SALES PROPOSAL OR IN WHAT LARRY GROOVER OFFERED, SO HE
15 INSTRUCTED ME TO DO THE COUNTEROFFER WHICH WOULD HAVE THE
16 SAME TERMS; WHICH I DID. AND HE AGREED TO MEET WITH ME
17 THE NEXT DAY, HE WAS AVAILABLE. WE MET AT HIS OFFICE ON
18 WEDNESDAY THE 28TH AND SIGNED THE COUNTEROFFER.

19 Q YOU DIDN'T HAVE ANY TROUBLE GETTING HIM THE NEXT
20 DAY --

21 A NO.

22 Q -- TO SIGN THE COUNTEROFFER?

23 A NO. AND ALSO WHILE I MET WITH HIM I SHOWED HIM
24 THE FINANCIAL STATEMENTS -- WE HAD THE FINANCIAL STATEMENTS
25 ON NOT ONLY THE CARLISLE GROUP BUT ALSO RON SINGER

1 PERSONALLY AS WELL AS A LIST OF ALL THE PROPERTIES THAT HE
2 OWNED.

3 Q WERE THOSE FINANCIALS EXHIBITS 14 AND 15?

4 A YES. THIS IS THE FINANCIAL ON THE CARLISLE
5 GROUP, WHICH SHOWS ASSETS OF AROUND \$20 MILLION. THIS IS
6 THE LIST OF THE MOBILE HOME PARKS AND THE FEW APARTMENT
7 BUILDINGS, THE VALUE OF WHICH IS JUST SHORT OF A HUNDRED
8 MILLION DOLLARS.

9 Q AND THOSE YOU RECEIVED FROM MR. SINGER; IS THAT
10 RIGHT?

11 A THAT'S CORRECT.

12 Q WHILE I'M AT IT, LET ME SHOW YOU EXHIBIT 16 AND
13 ASK YOU TO IDENTIFY THAT. WHAT IS THAT?

14 A EXHIBIT 16 IS THE EARNEST MONEY THAT WE WROTE AT
15 MR. SINGER'S OFFICE IN BEVERLY HILLS IN CALIFORNIA DATED
16 NOVEMBER 23RD, 1979.

17 Q IS THAT YOUR HANDWRITING?

18 A YES.

19 Q EXCEPT FOR THE SIGNATURE?

20 A THAT'S CORRECT.

21 Q AND IS THAT WHAT YOU REPRESENTED TO HIM OVER
22 THE TELEPHONE?

23 A CORRECT.

24 Q TO MR. HUNT OVER THE TELEPHONE?

25 A RIGHT.

1 Q AND EXHIBIT 17, IS THAT THE COUNTEROFFER THAT
2 YOU SAY YOU SIGNED AND HAD HIM SIGN ON THE 28TH?

3 A THAT'S CORRECT.

4 Q AT THAT TIME DID YOU DISCUSS THE GROOVER OFFER
5 ANY FURTHER?

6 A OH, ABSOLUTELY. I'M REMINDING HIM THAT TIME IS
7 RUNNING OUT, WE NEED TO GET THESE CONTINGENCIES REMOVED.

8 Q AND WHAT WAS MR. HUNT'S RESPONSE?

9 A HE SAID, WELL, WE'VE GOT -- HE AGREED WITH ME.
10 HE SAID, WE NEED TO GET UP THERE AND -- TO ROCK SPRINGS
11 AND WE NEED TO GET TOGETHER ON THE BOOKS AND --

12 Q WHO SAID, "THE BOOKS"?

13 A AS I RECALL THAT WAS DORAN -- MR. HUNT HAD A
14 DAUGHTER, HAS A DAUGHTER LORRAINE THAT WAS MANAGING THE
15 MOBILE HOME PARK UP IN ROCK SPRINGS, AND SHE HAD SOME
16 INFORMATION UP THERE. BUT MOST OF THE BOOKS THAT I RECALL
17 WERE HERE IN TOOELE, AT LEAST THAT'S WHAT WAS REPRESENTED,
18 THAT WE NEEDED TO MEET TO GET A LOT OF THE INFORMATION THAT
19 WE NEEDED.

20 Q WERE THEY IN MR. HUNT'S POSSESSION?

21 A YES.

22 Q ON THE 28TH DID YOU RESCHEDULE A TIME, THEN, IN
23 WHICH TO MEET WITH MR. GROOVER?

24 A YES, WE DID. AND THAT WAS TO BE ON THE 30TH, AS
25 I RECALL.

1 Q ALL RIGHT. AND WHAT HAPPENED ON THE 30TH?

2 A WELL, ON THE 30TH HE WASN'T ABLE TO GO AGAIN.

3 Q DID YOU TALK TO HIM ABOUT GOING?

4 A YES.

5 Q AND HE --

6 A HE WASN'T ABLE TO GO, AND CONSEQUENTLY WE

7 RESCHEDULED FOR DECEMBER THE 3RD.

8 Q AND HE CANCELED ON THE 30TH AND YOU RESCHEDULED

9 FOR THE 3RD?

10 A THAT'S CORRECT.

11 Q WHEN DID YOU NEXT TALK TO LARRY OR TO DORAN ABOUT

12 MEETING ON THE 3RD?

13 A THAT WAS ON THE 2ND OF DECEMBER, WHICH WAS A

14 SUNDAY. AND BY NOW THERE HAD BEEN QUITE A PATTERN SET OF

15 NOT BEING ABLE TO FOLLOW THROUGH WITH OUR COMMITMENT, SO

16 HE CALLED LARRY TO VERIFY THAT HE WAS STILL AVAILABLE TO

17 GO ON THE NEXT DAY, ON THE 3RD, HE WAS. I CALLED DORAN

18 AND -- I'M A COMMERCIAL PILOT. I WAS GOING TO FLY US UP

19 TO ROCK SPRINGS, AND IT TURNED OUT THAT THE WEATHER WAS

20 NOT CONDUCIVE TO FLYING. SO, WE WERE GOING TO DRIVE. I

21 ASKED, I INVITED MR. HUNT TO GO WITH US. HE TOLD ME, NO,

22 HE WAS LEAVING THAT EVENING, HE HAD BUSINESS UP THERE AND

23 HE WOULD MEET US THERE THE NEXT DAY IN ROCK SPRINGS.

24 Q DID YOU EXPRESS YOUR CONCERN ABOUT BEING ABLE

25 TO MEET WITH HIM AT THAT TIME?

1 A I DID, BECAUSE OF THE NUMBER OF TIMES THAT WE
2 HAD BEEN SCHEDULED TO MEET AND IT HAD BEEN POSTPONED OR
3 PUT OFF, AND ASKED HIM, I SAID, YOU KNOW, TRYING TO BE
4 CORDIAL I SAID, ARE YOU SURE? AND HE SAID, YEAH, I'LL
5 BE THERE, SOMETHING TO THAT EFFECT.

6 Q AND SO, THE 3RD YOU WERE TO MEET UP IN ROCK
7 SPRINGS?

8 A THAT'S CORRECT.

9 Q DID YOU TRAVEL UP TO ROCK SPRINGS THAT DAY?

10 A YES, WE DID.

11 Q AND YOU SAY, "WE" --

12 A THAT'S LARRY GROOVER AND I. WE DROVE ALL THE
13 WAY UP THERE.

14 Q AND WHEN YOU GOT THERE WAS MR. HUNT THERE?

15 A NO, HE WAS NOT.

16 Q DID YOU MAKE ANY ATTEMPT TO CONTACT HIM?

17 A YES, WE DID.

18 Q WHEN DID YOU TRY TO CONTACT HIM?

19 A SOMETIME IN AROUND NOON, 1:00; MIGHT HAVE BEEN
20 11:00. SOMETIME IN THE LATE MORNING AFTER WE ARRIVED.
21 AND HE WASN'T THERE.

22 Q WHERE DID YOU CALL?

23 A WE CALLED FROM THE OFFICE, HIS DAUGHTER'S OFFICE.
24 AND SHE -- WE CALLED HIS HOME AND HE ANSWERED THE PHONE.

25 Q OKAY. DID YOU TALK TO HIM?

1 A YES.

2 Q WHAT DID HE SAY?

3 A SOMETHING TO THE EFFECT THAT HE APOLOGIZED, THAT
4 HE JUST COULDN'T GET AWAY AND WASN'T THERE.

5 Q DID YOU ATTEMPT TO MAKE ARRANGEMENTS TO MEET
6 WITH HIM LATER ON?

7 A ABSOLUTELY.

8 WE TRIED TO SEE WHAT WE COULD ABOUT THE PARK
9 THERE AND, OF COURSE, THERE WAS STILL A LOT OF QUESTIONS
10 THAT NEEDED TO BE ANSWERED ABOUT THE SITE ITSELF. HOWEVER,
11 MR. HUNT TOLD US IF WE WOULD COME TO TOOELE THAT AFTERNOON
12 HE WOULD MEET WITH US AT HIS OFFICE.

13 Q SO, DID YOU DRIVE ALL THE WAY BACK TO TOOELE THAT
14 DAY?

15 A WE SURE DID. WE DROVE FROM ROCK SPRINGS ALL THE
16 WAY TO TOOELE, AND WE, PROBABLY BETWEEN 4:00 AND 5:00 IN
17 THE AFTERNOON WE ARRIVED.

18 Q WHEN YOU ARRIVED WHERE DID YOU GO?

19 A TO THE OFFICE.

20 Q AND WHAT HAPPENED WHEN YOU ARRIVED AT THE OFFICE?

21 A MRS. HUNT TOLD US THAT MR. HUNT WAS HOME AND HE
22 WAS UNAVAILABLE.

23 Q DID YOU ATTEMPT TO MEET WITH HIM NEVERTHELESS?

24 A SURE DID.

25 Q WHAT DID YOU DO?

1 A WELL, WHAT WE DID, WE CALLED HIM ON THE PHONE
2 AND LARRY TALKED TO HIM AT THAT TIME.

3 Q WERE YOU ABLE TO MEET WITH HIM?

4 A NO.

5 Q DID YOU TRY TO MEET WITH HIM AFTER THAT?

6 A THAT'S THE -- THE SAME DAY OR SUBSEQUENT DAY?

7 Q LATER?

8 A NO, NO. THERE WAS NO -- HE WAS NOT -- HE TOLD
9 US HE WOULD NOT BE ABLE TO MEET WITH US, SO WE TRAVELED
10 BACK TO SALT LAKE.

11 Q ALL RIGHT. AFTER THAT UNSUCCESSFUL ATTEMPT DID
12 YOU ATTEMPT TO MEET WITH HIM ANOTHER DAY?

13 A WELL, ABSOLUTELY. I CALLED HIM AND WE TRIED TO
14 SET UP AN APPOINTMENT FOR THE 5TH, AND HE WASN'T AVAILABLE.
15 CALLED HIM ON THE 6TH AND HE STILL WAS UNAVAILABLE. ON
16 THE 7TH, WE WERE THEN TWO DAYS FROM THE 30-DAY TIME PERIOD
17 WE HAD ALLOTTED THOSE CONTINGENCIES TO BE REMOVED, AND I
18 MENTIONED TO MR. HUNT -- HIS COMMENT WAS, WELL, WE HAVE
19 TO GET -- WE'LL HAVE TO DO IT. WE'LL GET IT DONE, OR
20 SOMETHING TO THAT EFFECT.

21 AND BY THIS TIME I WAS EXTREMELY CONCERNED ABOUT
22 WHETHER HE WAS JUST PURPOSELY BEING PUT OFF OR WHAT WAS
23 HAPPENING. AND FOR EVERY CONVERSATION I HAD WITH MR. HUNT
24 I HAD SEVERAL WITH MRS. HUNT. SHE WOULD BE THE ONE THAT
25 WOULD ANSWER THE PHONE, AND I WOULD ASK, I SAID, "HEY, I'M

1 SPINNING MY WHEELS. SHOULD I -- IS THERE ANOTHER OFFER?"
2 I MAY HAVE ASKED THAT, SHOULD I -- AM I SPINNING MY WHEELS
3 DON'T YOU WANT TO SELL THE PARK?

4 ALL OF THE RESPONSES WAS, "GARY, WE WANT TO SELL
5 THE PARK. HAVE PATIENCE. PERSEVERE." THOSE WERE THE
6 COMMENTS.

7 Q DID THERE COME A POINT IN TIME WHEN MR. GROOVER
8 ASKED FOR HIS EARNEST MONEY DEPOSIT BACK?

9 A THAT WAS CORRECT.

10 Q WHEN DID THAT HAPPEN?

11 A THAT WAS ON FRIDAY THE 7TH OF DECEMBER.

12 WHEN I TALKED WITH HIM AT THAT TIME I WAS GOING
13 TO TRY TO MAKE THE LAST ATTEMPT TO GET US ALL TOGETHER,
14 AND HE TOLD ME THAT IT WAS OBVIOUS TO HIM THAT MR. HUNT
15 WAS NOT GOING TO MEET WITH HIM, NOT GOING TO FULFILL HIS
16 END OF THE CONTRACT AND SAID HE HAD THE OTHER PROJECT,
17 THE TIMBER LEAF, THAT HE WANTED TO WORK ON AND OTHER THINGS.
18 AND HE REQUESTED HIS EARNEST MONEY BACK. HE DIDN'T FEEL
19 THAT HE WAS GOING TO GET ANYWHERE.

20 Q DID YOU CONVEY THAT MESSAGE TO MR. ROSS BROADBENT?

21 A I DID.

22 Q AND DO YOU KNOW IF HIS EARNEST MONEY WAS THEN
23 SUBSEQUENTLY RETURNED?

24 A IT WAS.

25 Q DO YOU KNOW WHEN IT WAS RETURNED?

1 A THAT'S CORRECT.

2 Q AND YOU HAD A CHANCE TO MAKE CHANGES, DIDN'T YOU?

3 A THAT'S CORRECT.

4 MR. WHITE: I OBJECT TO THAT BECAUSE CHANGES YOU
5 MAKE TO A DEPOSITION MAY BE IN ADDITION TO WHAT YOU MAY
6 HAVE SAID, WHETHER OR NOT WHAT YOU SAID WAS WHAT YOU SAID,
7 AND I THINK THAT'S A LITTLE MISLEADING IN THIS QUESTION.

8 THE COURT: YOU MAY REPHRASE THE QUESTION.

9 Q (BY MR. OLSEN) DID YOU HAVE AN OPPORTUNITY TO
10 MAKE CHANGES TO YOUR DEPOSITION?

11 A YES. THE ONLY CHANGES THAT WERE --

12 Q DID YOU HAVE AN OPPORTUNITY TO MAKE CHANGES?

13 A YES.

14 Q DID YOU MAKE ANY?

15 A I'M SURE I DID.

16 Q BUT YOU DIDN'T MAKE ANY AS TO THE TESTIMONY
17 WE'RE DISCUSSING, DID YOU?

18 A NO.

19 Q WAS THERE A REASON YOU DIDN'T ASK MR. GROOVER
20 FOR ANY FINANCIALS?

21 A I THINK AT THE TIME THAT WE WROTE THE OFFER I
22 HAD ALREADY BEEN TO THE MEETING AT THE HOTEL UTAH AND
23 LARRY HAD TOLD ME THAT HIS ABILITY TO PURCHASE WAS BASED
24 UPON THE CLIENTELE. AND IT IS VERY DIFFICULT TO REMEMBER
25 WHAT HAPPENED SIX YEARS AGO, AND THAT IS SOMETHING THAT --

1 I WOULD LIKE TO THINK THAT I ASKED HIM FOR FINANCIALS
2 BECAUSE I DID RON SINGER AND I WOULD HAVE ANYBODY ELSE.
3 BUT THAT'S WHY I REALLY DON'T KNOW FOR SURE, BUT I WOULD
4 SAY THAT LARRY DIDN'T HAVE FINANCIALS AVAILABLE FOR ME,
5 IF I DID ASK FOR THEM, AND HE INSTRUCTED ME THAT HIS, THAT
6 THE STRENGTH OF HIS CASE WOULD BE THE FACT THAT HE WOULD
7 PERFORM WITHIN 30 DAYS.

8 Q SO, YOU TOOK HIS REPRESENTATION AND YOU DIDN'T
9 CHECK BEHIND IT, DID YOU?

10 A IN WHAT HE --

11 Q YOU DIDN'T CHECK BEHIND THE REPUTATION, DID YOU?

12 A THE REPUTATION, YOU ARE MEANING THAT -- THAT HE
13 HAD THE CLIENTS. I SURE DID, BECAUSE I WAS THERE AND
14 WITNESSED AND SAW IT.

15 Q YOU DON'T KNOW THEIR RELATIONSHIP WITH HIM, DO
16 YOU? THEY SAT IN A ROOM WITH HIM, RIGHT?

17 A IT IS DIFFICULT TO BE IN A MEETING IN A ROOM
18 TWICE THIS SIZE FILLED WITH PEOPLE AND HAVE A GENTLEMAN
19 STAND UP THERE CONDUCTING A MEETING FOR AN HOUR OR TWO
20 HOURS OVER WHAT ALL OF THESE PEOPLE'S INVESTMENT HAS DONE
21 FOR THEM OVER THE PAST YEARS AND AN ANNUAL REPORT AND NOT,
22 FROM THAT, HAVE A REAL GOOD ASSUMPTION THAT HE HAS HAD
23 SOME DEALINGS WITH A VERY EXCLUSIVE, ELITE GROUP OF PEOPLE.

24 Q IT'S AN ELITE GROUP OF PEOPLE, BUT YOU DON'T
25 KNOW ANY OF THEIR NAMES?

1 A YES, I DID.

2 Q WHENEVER YOU TALKED TO MR. HUNT, WAS ANYTHING
3 EVER PERSONALLY SAID TO YOU BY MR. HUNT CONCERNING THE
4 LATENESS OF THE CHECK?

5 A NO, THERE WAS NOT.

6 Q OR CONCERNING ITS HAVING BEEN RETURNED, "REFER
7 TO MAKER"?

8 A NO.

9 Q OR THAT HE WAS NOT GOING TO PROCEED WITH THE,
10 WITH YOUR EARNEST MONEY BECAUSE THE CHECK HAD NOT BEEN
11 TIMELY RECEIVED?

12 A NO. I TALKED TO HIM AFTER THAT TIME AND AT ALL
13 TIMES HE INDICATED TO ME HE WAS GOING TO PROCEED.

14 Q IN YOUR OPINION, ON THE 9TH OF NOVEMBER OF 1979
15 WERE YOU ABLE TO PROCEED, ABLE TO PURCHASE THIS PROJECT?

16 A YES, I WAS.

17 Q HAVE YOU SINCE THAT TIME PURCHASED OTHER PROJECTS?

18 A YES, I HAVE.

19 Q IN SUMS IN EXCESS OF \$3 MILLION?

20 A YES.

21 Q DID YOU HAVE ANY GROOVER/HOFFMAN ACCOUNTS DURING
22 1980?

23 A NO. BASICALLY WE CLOSED IT AT THE END OF '80 AND
24 I WENT TO GROOVER FINANCIAL MANAGEMENT FOR -- IT WAS A
25 CORPORATION WE USED.

1 WELL, I'M SORRY. WE DID HAVE AN ACCOUNT THAT I
2 CLOSED OUT I THINK ABOUT JUNE OF '80, BUT I STARTED USING
3 GROOVER FINANCIAL TRUST ACCOUNT AND GROOVER FINANCIAL
4 MANAGEMENT MOST OF THE --

5 Q AND DID INVESTOR MONEY COME THROUGH THOSE
6 ACCOUNTS?

7 A YES, IT DID.

8 Q DEPOSITED TO THOSE ACCOUNTS?

9 A YES.

10 (WHEREUPON, EXHIBIT P-29 WAS
11 INTRODUCED FOR IDENTIFICATION.)

12 Q (BY MR. SMITH) LET ME SHOW YOU EXHIBIT 29 --
13 YOUR HONOR, THIS IS ONE THAT HAS BEEN OBJECTED
14 TO AND --

15 I ASK THAT YOU IDENTIFY THAT.

16 A YES. THIS WAS A GROOVER FINANCIAL MANAGEMENT
17 ACCOUNT THAT WE MAINTAINED AT WALKER BANK, AND WE OPENED
18 IT UP BASICALLY THE FIRST OF '80.

19 THE COURT: WHAT IS THE DATE?

20 THE WITNESS: JANUARY 1980.

21 THE COURT: GO AHEAD. YOU MAY PROCEED.

22 Q (BY MR. SMITH) WHAT DOES THAT DOCUMENT PURPORT
23 TO SHOW?

24 MR. OLSEN: WELL --

25 Q (BY MR. SMITH) WHAT DOES IT SHOW?

1 A IT SHOWS THE DEPOSITS EACH MONTH FOR THE YEAR
2 1980.
3 Q INTO THAT ACCOUNT?
4 A THAT'S CORRECT.
5 Q AND WOULD THAT HAVE BEEN INVESTOR MONIES INTO
6 THIS ACCOUNT?
7 A NO. IN THAT ACCOUNT IT WOULD HAVE BEEN INCOME
8 TO THE CORPORATION.
9 MR. SMITH: I WILL MOVE THE ADMISSION OF
10 PLAINTIFF'S EXHIBIT NO. 29.
11 MR. OLSEN: MAY I VOIR DIRE?
12 THE COURT: YES.
13 VOIR DIRE EXAMINATION
14 BY MR. OLSEN:
15 Q THE DOCUMENTS BEFORE YOU ARE NOT COMPLETE, ARE
16 THEY MR. GROOVER?
17 A NO.
18 Q THEY DON'T SHOW THE DEPOSITS?
19 A THEY DO SHOW DEPOSITS.
20 Q THEY DON'T SHOW THE DAY OF DEPOSIT; CORRECT?
21 A THEY SHOW THE BANK STATEMENTS OF THE DEPOSITS
22 FOR THE MONTH.
23 Q BUT THAT IS NOT A COMPLETE BANK STATEMENT YOU
24 HAVE BEFORE YOU?
25 A THAT'S CORRECT. DOESN'T SHOW WITHDRAWALS OR

1 ACTUAL CHECKS OR ANYTHING OF THAT NATURE.

2 Q DOESN'T SHOW WHETHER ANY CHECKS BOUNCED OR
3 CLEARED, DOES IT?

4 A THAT'S CORRECT.

5 MR. OLSEN: I OBJECT TO THAT. IT IS AN
6 INCOMPLETE DOCUMENT.

7 MR. WHITE: ALL WE'RE ATTEMPTING TO SHOW BY THOSE
8 DOCUMENTS ARE THAT CERTAIN MONEY TRANSACTIONS WERE, IN
9 FACT, IN --

10 THE COURT: YOU CAN RUN THROUGH A BANK ACCOUNT,
11 YOU CAN DEPOSIT MONEY AND DRAW IT OUT AND WRITE CHECKS.

12 MR. WHITE: WELL, THAT'S WHAT, IN FACT, OCCURRED
13 BECAUSE OF HIS ABILITY TO RAISE MONEY. IT SHOWS WHAT WAS
14 COMING IN. HE COULD TESTIFY AS TO WHAT WENT OUT. THOSE
15 ARE JANUARY OF 1980. THE EARNEST MONEY AGREEMENT RAN
16 UNTIL THEN.

17 MR. OLSEN: I WOULD OBJECT TO IT, YOUR HONOR.

18 THE COURT: THE OBJECTION IS SUSTAINED. IF YOU
19 HAD A COMPLETE ACCOUNTING, THEN IT WOULD BE A DIFFERENT
20 STORY; BUT THAT IS NOT COMPLETE SO THE OBJECTION IS
21 SUSTAINED.

22 MR. OLSEN: YOUR HONOR, EXHIBIT 30 IS A DIFFERENT
23 ACCOUNT; HOWEVER, I ASSUME THE COURT'S OBJECTION -- OR THE
24 COURT WOULD SUSTAIN AN OBJECTION BASED UPON THE SAME
25 GROUNDS?

1 THE COURT: YOU KNOW THAT THE FACT THAT YOU HAVE
2 MONEY COMING INTO AN ACCOUNT DOESN'T PROVE -- IT'S THE
3 PURPOSE FOR WHICH THE MONEY WAS THERE.

4 MR. WHITE: I THINK HE NEEDS TO EXPLAIN THAT SO
5 THAT HE CAN SHOW THE RELEVANCY OF THIS ACCOUNT. THIS CASE
6 IS PREMISED ON THE FACT THAT THERE -- GROOVER'S ABILITY TO
7 RAISE MONEY FROM CLIENTS AS NEEDED FOR THESE DIFFERENT
8 PROJECTS. NOW, WE HAVE EVIDENCE THAT HE'S DOING THAT THE
9 VERY NEXT MONTH.

10 THE COURT: WELL --

11 MR. WHITE: THAT IS RELEVANT INFORMATION.

12 THE COURT: THE OBJECTION IS SUSTAINED. GO AHEAD.

13 MR. SMITH: YOUR HONOR, AS TO 30, JUST FOR THE
14 RECORD MY PROFFER WOULD BE THAT I WOULD SUBMIT TO HIM
15 EXHIBIT 30 WHICH PURPORTS TO BE HOOVER FINANCIAL TRUST
16 ACCOUNTS THROUGH WHICH MONEY WAS DEPOSITED, ALSO FROM
17 CLIENTS, INVESTOR CLIENTS.

18 THE COURT: YOU KNOW THAT IF YOU'RE GOING TO GET
19 INTO THIS YOU HAVE TO LAY A FOUNDATION, WHERE THE FUNDS
20 CAME FROM, WHAT THE PURPOSE WAS. IF YOU'RE JUST GOING TO
21 SUBMIT A FINANCIAL STATEMENT, IT'S INADEQUATE. SO, IF YOU
22 WANT TO LAY A FOUNDATION, THEN AT THAT TIME MAYBE THE
23 COURT WOULD CONSIDER IT; BUT WITHOUT ANY FOUNDATION, JUST
24 TO ASK THE COURT TO ADMIT A BANK STATEMENT IS TOTALLY
25 INADEQUATE.

1 MR. WHITE: I'M JUST SAYING WE NEED TO LAY THE
2 FOUNDATION. WE SHOULD GET TO THE POINT.

3 THE COURT: MR. OLSEN OBJECTED AND I GRANTED THE
4 MOTION TO DENY THE ADMISSION MERELY BASED UPON THE FACT
5 THAT THERE IS NO FOUNDATION.

6 MR. SMITH: SO, IF I LAY A FOUNDATION, YOUR
7 HONOR --

8 DIRECT EXAMINATION (CONT'D)

9 BY MR. SMITH:

10 Q MR. GROOVER, ARE YOU ABLE TO IDENTIFY WHERE THOSE
11 FUNDS CAME FROM THAT WENT THROUGH THAT ACCOUNT?

12 A AGAIN, IN GENERALITIES, YES. EACH SPECIFIC ENTRY,
13 NO.

14 Q GENERALLY WHERE DID THEY COME FROM?

15 A AGAIN, IN THIS ACCOUNT YOU BROUGHT HERE, THEY
16 WERE INCOME ITEMS FOR HOFFMAN FINANCIAL MANAGEMENT FOR
17 HANDLING SALES IN VARIOUS PARKS, THE GROOVER FINANCIAL
18 TRUST -- SPECIFICALLY CONTRIBUTIONS FROM CLIENTS FOR
19 SPECIFIC PRODUCTS. IT WAS A CONDUIT ACCOUNT, IF YOU WILL,
20 ESSENTIALLY FOR THEIR BENEFIT TO WHOEVER THEY WERE BUYING
21 FROM.

22 Q THAT IS PLAINTIFF'S EXHIBIT 30 THAT YOU ARE
23 REFERRING TO?

24 A THAT'S CORRECT.

25 Q AND THAT WAS ALSO FOR THE YEAR 1980?

1 A THAT'S CORRECT.

2 Q AND ARE YOU ABLE TO IDENTIFY WHAT TYPES OF --
3 WHAT TYPES OF PROJECTS THOSE MONIES WENT TO?

4 A AGAIN, WE WERE SELLING DIAMONDS. WE RAISED THE
5 FUNDS, AS I INDICATED, FROM THE TIMBER LEAF APARTMENT
6 COMPLEX IN DENVER. THERE WERE TAX SHELTER-TYPE THINGS THEY
7 BOUGHT. SEE, IN EACH OF THOSE CASES CLIENTS WOULD PUT
8 MONEY IN THIS ACCOUNT AND I WOULD SEND IT ON FOR THEIR
9 BENEFIT. IF THEY WERE SECURITY PRODUCTS, THEY WERE SENT
10 DIRECTLY TO THE SECURITY FIRM, BUT IF IT WAS A NONSECURITY
11 PRODUCT THEN TYPICALLY IT WOULD GO THROUGH THAT ACCOUNT.

12 Q AND THOSE, ALL OF THOSE MONIES, THEN WERE
13 DISBURSED IN 1980?

14 A THAT'S CORRECT.

15 MR. SMITH: I MOVE THE ADMISSION --

16 THE COURT: WHAT WAS THE TOTAL AMOUNT THAT WENT
17 THROUGH THAT ACCOUNT IN JANUARY, 1980?

18 MR. SMITH: I THINK IT'S THERE.

19 MR. WHITE: HAVE HIM TESTIFY.

20 MR. OLSEN: I OBJECT TO THE ADMISSION OF THAT.

21 MR. WHITE: IF I MAY INTERJECT, I THINK THERE IS
22 SUFFICIENT FOUNDATION FOR THE COURT TO SEE THAT. THAT IS
23 THIS MAN'S PROFESSION, WHAT HE DOES. HE INDICATED TO THE
24 COURT THAT HE DEALS IN DIFFERENT PROJECTS, TAX SHELTERS,
25 RUNS A TRUST ACCOUNT. HE'S AN ATTORNEY. THAT'S WHAT HE

1 DOES. HE'S GOING THROUGH THAT WITHIN 60 DAYS FROM THE TIME
2 WHEN ALL OF THIS IS DONE, AND I THINK THAT IT IS RELEVANT,
3 THAT THERE HAS BEEN FOUNDATION LAID. OBVIOUSLY HE'S NOT
4 GOING TO BE ABLE TO TELL EXACTLY \$10 CAME FROM SO-AND-SO
5 AND \$10,000 CAME FROM SO-AND-SO; BUT HE'S RUNNING A TRUST
6 ACCOUNT.

7 THE COURT: JUST FOR MY OWN CURIOSITY, HOW MUCH
8 WENT THROUGH THAT ACCOUNT IN JANUARY 1980?

9 THE WITNESS: SEVENTEEN THOUSAND SIX HUNDRED IN
10 JANUARY, YOUR HONOR.

11 THE COURT: I WILL ADMIT IT THEN. WE WILL ADMIT
12 IT BASED ON FOUNDATION.

13 (WHEREUPON, EXHIBIT P-30 WAS
14 RECEIVED INTO EVIDENCE.)

15 THE COURT: WE'RE TALKING ABOUT \$17,000 ON A
16 3 OR 4 MILLION PROJECT, THAT WOULDN'T COVER THE DAILY
17 INTEREST. GO AHEAD.

18 Q (BY MY SMITH) WITH RESPECT TO ANY NEGOTIATIONS
19 THAT YOU MAY HAVE HAD WITH MR. HUNT AFTER THE 19TH OF
20 NOVEMBER, DO YOU RECALL THE FIRST DATE THAT YOU ATTEMPTED
21 TO MAKE CONTACT WITH MR. HUNT?

22 A YES. WE HAD SIGNED THE CONTRACT AND GARY LARSON
23 -- FIRST MET WITH HIM ON THE 26TH OF NOVEMBER IN HIS
24 OFFICE.

25 Q DID YOU COME TO TOOELE THEN?

1 A YES.

2 Q WITH GARY LARSON?

3 A YES.

4 Q ATTEMPT TO MEET WITH HIM IN HIS OFFICE?

5 A YES.

6 Q WHAT WAS THE RESULT OF THAT?

7 A HE WAS NOT PRESENT. WE CALLED HIM AT HOME AND
8 HE APOLOGIZED FOR NOT BEING THERE. WE DISCUSSED THE
9 PROJECT AND GOING OVER TO ROCK SPRINGS TO MEET WITH HIM
10 AND LOOK OVER THE PROJECT.

11 Q DID YOU DISCUSS A DATE?

12 A YES, WE DID. IT WAS FINALLY RESOLVED; IT WOULD
13 HAVE TO BE THE 3RD OF DECEMBER.

14 Q WHAT WAS THE PURPOSE IN MEETING WITH MR. HUNT,
15 IN YOUR MIND?

16 A AGAIN WE WANTED TO SEE WHAT ALL HE HAD HAD TO
17 OFFER BESIDES JUST THE TRAILER PADS. WE WERE INTERESTED
18 IN THE TRAILERS AS WELL. WE WERE TRYING TO LOOK AT THE
19 BOOKS TO SEE THE INCOME TO VERIFY THAT. WE ALSO WANTED
20 TO TAKE A LOOK AT THE UNDERLYING MORTGAGE TO SEE IF WE
21 COULD RELEASE PARTIALLY VERSUS ALL AT ONE TIME. BASICALLY
22 THOSE THINGS, PUT TOGETHER OUR PACKAGE.

23 Q IN FACT, DID YOU ATTEMPT TO MEET WITH HIM ON THE
24 3RD IN ROCK SPRINGS?

25 A YES.

Q DID YOU GO OVER TO ROCK SPRINGS THAT DAY?

A YES.

Q WITH WHOM DID YOU GO?

A I WENT WITH GARY LARSON.

Q WHAT OCCURRED?

A AGAIN MR. HUNT DID NOT SHOW UP. WE MET WITH SOME OF HIS STAFF OVER THERE. WE TALKED TO THEM. GOT ON THE PHONE. HE APOLOGIZED FOR NOT BEING ABLE TO MAKE IT, TOLD US TO GO AHEAD AND LOOK AT THE PROJECT, TALK WITH PEOPLE THERE AND THEN COME BACK AND MEET WITH HIM HERE IN TOOELE.

Q DID YOU COME BACK TO TOOELE THEN?

A THEN WE CAME BACK TO TOWN AND CALLED HIM AND WE NEVER COULD MEET TOGETHER WITH HIM.

Q WHAT WAS YOUR UNDERSTANDING ABOUT WHO HAD CONTROL OF THE BOOKS?

A MY UNDERSTANDING WAS THAT MR. HUNT HAD CONTROL.

Q WERE YOU EVER ABLE TO EXAMINE THE BOOKS?

A NO, I WASN'T.

Q OR THE UNDERLYING DOCUMENTS THAT YOU REFERRED TO?

A NO, I WAS NOT.

Q YOU DID VISIT THE TRAILER PARK, I TAKE IT?

A YES, I DID.

Q WHY DID YOU NEED TO MEET WITH HIM AT THE TRAILER PARK?

1 A I NEEDED TO SEE THE BOOKS. HE DIDN'T ACTUALLY
2 HAVE TO BE AT THE TRAILER PARK TO DO THAT, BUT THAT'S
3 WHAT I THOUGHT WE WERE GOING TO DO.

4 Q WERE ANY FURTHER ATTEMPTS MADE AFTER THE 3RD OF
5 DECEMBER TO MEET WITH MR. HUNT?

6 A YES. I TRIED TO CALL HIM A COUPLE TIMES, AND
7 GARY CAME TO MY OFFICE AND TRIED TO CALL HIM. WE WERE NEVER
8 ABLE, AND SOMEWHERE AROUND THE 9TH, 10TH I TOLD GARY I HAD
9 TO GO TO OTHER THINGS, I JUST COULDN'T FOOL AROUND.

10 Q DID YOU ASK FOR YOUR DEPOSIT BACK AT THAT TIME?

11 A MY RECOLLECTION, SOMEWHERE AROUND THE 19TH OF
12 DECEMBER.

13 Q DID YOU RECEIVE THAT DEPOSIT?

14 A YES, I DID.

15 Q HOW DID YOU ASK FOR YOUR DEPOSIT BACK?

16 A I TOLD GARY AFTER IT LOOKED LIKE WE COULDN'T GO
17 FORWARD -- HE TOLD ME HE HAD A BACKUP OFFER. I SAID HE
18 OUGHT TO GO FORWARD WITH THAT AND JUST RETURN MY EARNEST
19 MONEY.

20 Q IN CONNECTION WITH THIS CASE, WERE YOU ASKED TO
21 ASSIST IN THE PREPARATION OF AN AFFIDAVIT?

22 A YES, I WAS.

23 Q AND DID YOU ASSIST IN THE PREPARATION OF AN
24 AFFIDAVIT CONCERNING THE FACTS OF THIS CASE?

25 A YES, I DID.

Q (BY MR. OLSEN) MR. GROOVER, YOUR TESTIMONY WAS THAT YOU SPOKE WITH MR. HUNT ON THE TELEPHONE?

A THAT'S CORRECT.

Q IS THAT YOUR TESTIMONY TODAY?

A THAT IS CORRECT.

Q YOU HAVE HAD OCCASION TO TESTIFY PRIOR IN THIS ACTION, HAVEN'T YOU, TAKING OF YOUR DEPOSITION?

A DEPOSITION, CORRECT.

Q DID YOU GET A CHANCE TO READ YOUR DEPOSITION?

A I READ IT SHORTLY AFTER WE DID IT, YES.

Q SIGN IT?

A YES.

Q HAVE YOU HAD AN OPPORTUNITY TO MAKE CHANGES?

A YES.

Q AT THAT TIME DID YOU TESTIFY THAT YOU HAD NOT SPOKEN WITH MR. HUNT, THAT YOU PLACED THREE TO FIVE CALLS FROM YOUR OFFICE IN THE PRESENCE OF MR. LARSON AND YOU WERE UNABLE TO MAKE CONTACT? YOU NEVER MET WITH MR. HUNT FACE TO FACE?

A YOU ASKED ME THREE QUESTIONS IN ONE, AND THE ANSWER IS, I SAID WHEN WE CAME OVER HERE I THOUGHT IN MY DEPOSITION, AND I SAID NOW WE DID, IN FACT, TALK WITH HIM ON THE PHONE. GARY LARSON GOT HIM ON THE PHONE AND I TALKED TO HIM BRIEFLY.

Q ONE TIME?

1 A THEN WHEN WE WENT TO ROCK SPRINGS WHEN HE DID NOT
2 SHOW UP, MR. LARSON GOT HIM ON THE PHONE AND I TALKED
3 BRIEFLY. I TRIED SEVERAL TIMES AFTER THAT; DID NOT GET
4 HIM ON HIS PHONE AND NEVER MET WITH HIM FACE TO FACE.

5 Q SO WHAT YOU HAD WERE TWO VERY BRIEF PHONE
6 CONVERSATIONS?

7 A CORRECT.

8 Q THOSE DIDN'T DESCRIBE ANY SUBSTANTIVE POINTS, DID
9 THEY?

10 A OTHER THAN WHAT I INDICATED.

11 Q DID HE REALLY DISCUSS FORECLOSURE?

12 A AGAIN, WE DID. ONE CONVERSATION HE JUST REMINDED
13 ME IF I DIDN'T MAKE THE PAYMENT HE HAD A RIGHT TO FORECLOSE.
14 THAT WAS IT.

15 Q THE RIGHT TO FORECLOSE, YOU'RE TALKING ABOUT, IS
16 \$5,000 EARNEST MONEY, NOT \$500,000?

17 A NO. IT WAS THE \$600,000.

18 Q GROOVER/HOFFMAN, INC., IS A COPORATION?

19 A IT WAS AT THAT TIME.

20 Q WHEN WAS IT INCORPORATED?

21 A MY RECOLLECTION IS THE FIRST OF '78.

22 Q IT WAS INCORPORATED WITH WHOM? WHO WERE THE
23 INCORPORATORS?

24 A CHUCK HOFFMAN, MYSELF AND I DON'T REMEMBER THE
25 THIRD PARTY.

EXHIBIT "J"

IN THE THIRD JUDICIAL DISTRICT COURT OF TOOELE COUNTY
...
STATE OF UTAH

BARNUM-BROADBENT REAL)	
ESTATE COMPANY,)	
a dissolved partnership,)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
Plaintiff,)	
)	
vs.)	
)	
THE ESTATE OF DORAN HUNT,)	
by and through its Co-)	
Personal Representatives,)	
DORAN RAY HUNT and JOAN)	Civil No. 1-80-0452
HUNT RALSTON, and HUNT)	HONORABLE JOHN A. ROKICH
DEVELOPMENT COMPANY,)	
)	
Defendants.)	
<hr/>		
GARY LARSON,)	
)	
Plaintiff-in)	
Intervention,)	
)	
vs.)	
)	
BARNUM-BROADBENT REAL ESTATE)	
COMPANY, a dissolved partner-)	
ship)	
)	
Defendant.)	

The above-entitled matter came on regularly for trial on Tuesday, February 11, 1986, the Honorable John A. Rokich presiding. Plaintiff was represented by David K. Smith, Esq., and Plaintiff-in-Intervention, Gary Larson, was present and repre-

sented by Douglas F. White, Esq. Defendants were represented by David R. Olsen, Esq. and Charles P. Sampson, Esq., of and for Switter Axland Armstrong & Hanson. Having heard the testimony of the witnesses, reviewed the documentary evidence and heard the arguments of counsel, the Court hereby makes and enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. In 1979, defendant Hunt Development Company, Inc. owned the Grandview Mobile Home Park (the "Park") in Rock Springs, Wyoming.

2. In October of 1979, Doran Hunt, the President of Hunt Development Company, was ill and could no longer oversee the management and finances of the Park and a decision was made to sell the Park. A "Sales Proposal" was issued which provided that the Park would be sold for the price of \$3,250,000.00 with a down payment of \$600,000.00 and the balance to be paid pursuant to a 20-year contract bearing 12% interest. Certain trailers and personal property at the Park were also offered for sale at a price to be negotiated.

3. In October of 1979, plaintiff-in-intervention, Gary Larson ("Larson"), was a licensed real estate agent employed by plaintiff, Barnum-Broadbent Real Estate Company ("Barnum-

Broadbent"). Barnum-Broadbent was a partnership comprised of Brent Barnum and Ross Broadbent as general partners.

4. In October of 1979, Larson obtained a copy of the Sales Proposal and, based upon the recommendations of a social acquaintance, presented it to Larry Groover, the President of Groover-Hoffman, Inc ("Groover-Hoffman").

5. Larry Groover told Larson that he would be interested in making an offer on the Park and that he was capable of purchasing it in accordance with the price and terms set forth in the Sales Proposal.

6. Larson contacted Doran Hunt in order to obtain a listing agreement on the Park.

7. On November 9, 1979, a "Listing Agreement" was negotiated between Larson and Doran Hunt which specifically provided:

It is agreed that Barnum and Broadbent shall receive a 3% commission on the total sales price of the Grand View Mobile Home Park in Rock Springs, Wyoming, should they provide a purchaser, who may in the future consummate [sic] the purchase of this mobile park.

8. At the time the Listing Agreement was negotiated, Larson knew that Doran Hunt did not intend to pay a commission if a sale of the Park was not consummated

9. At the time the Listing Agreement was negotiated, Larson knew that the phrase "consummate a purchase" meant that the sale must close. Larson understood that an earnest money receipt and offer to purchase was not a closing.

10. Larson and Barnum-Broadbent had a financial interest in obtaining a buyer for the Park.

11. On November 9, 1979, Larson presented an offer by Groover-Hoffman to Hunt Development Company for the purchase of the Park. The offer provided for a down payment of \$600,000.00, which was to be paid in full or or before February 9, 1980 with the balance of the \$3,250,00.00 sales price to be amortized over twenty years bearing an interest rate of 12%.

12. Larson represented to Doran Hunt at the time the Groover-Hoffman earnest money offer was presented, that Groover-Hoffman was a good and capable buyer, which representation was proven not to be true.

13. Groover-Hoffman's earnest money deposit consisted of a \$5,000.00 promissory note which was to be replaced by a company check on or before November 16, 1979.

14. Contrary to their standard practice, neither Larson nor Barnum-Broadbent investigated the creditworthiness of Groover-Hoffman before making the representation to Doran Hunt that

Groover-Hoffman was a good and capable buyer; they obtained no financial statements for either Groover-Hoffman or Larry Groover, nor did they obtain any bank statements or verify any bank accounts.

15. The creditworthiness and financial ability of Groover-Hoffman to perform pursuant to the earnest money receipt and offer to purchase were material to Hunt Development Company's decision to accept Groover-Hoffman's earnest money offer.

16. Larson's representation to Doran Hunt concerning Groover-Hoffman's financial ability was based solely on Larry Groover's statement that he was financially capable of buying the Park and Larson's observing Larry Groover conducting financial seminars concerning Egyptian artifacts and diamonds.

17. Groover-Hoffman was not a good and capable buyer in November 1979, contrary to Larson's representations.

18. At the time Groover-Hoffman made its earnest money offer to Hunt Development Company, Larry Groover was subject to outstanding personal judgments in an amount exceeding \$80,000.00; Groover-Hoffman had a net worth of less than \$50,000.00; and Groover-Hoffman was in the process of winding up its affairs prior to dissolution.

19. During the time period immediately prior to making its earnest money offer to Hunt Development Company, Groover-Hoffman had been turned down for a loan for office furniture by Commercial Security Bank because of Larry Groover's outstanding judgments.

20. The promissory note representing the earnest money deposit was not replaced by a company check until November 21, 1979, at the earliest.

21. When it was deposited by Barnum-Broadbent the Groover-Hoffman check failed to clear the bank. The check was returned stamped "refer to maker" because Groover-Hoffman's account had insufficient funds to cover the check. The check was processed a second time and was paid sometime after November 30, 1979.

22. Neither Barnum-Broadbent nor Larson informed Doran Hunt that Groover-Hoffman's check had bounced.

23. Every piece of property that Larry Groover purchased through his various entities since November of 1979 has either been taken back by the sellers through deeds in lieu of foreclosure or lost through foreclosure.

24. At the time Larson told Doran Hunt that Groover-Hoffman was a good and capable buyer, Gary Larson knew that he

had insufficient knowledge upon which to base such a representation.

25. Larson and Barnum-Broadbent acted negligently in making the representation to Doran Hunt regarding Groover-Hoffman's financial ability.

26. Larson's representation to Doran Hunt concerning Groover-Hoffman's financial ability was made to induce Doran Hunt to accept Groover-Hoffman's offer which, if the sale closed, would result in a pecuniary gain to Larson and Barnum-Broadbent.

27. Doran Hunt did not know that Groover-Hoffman was not a good and capable buyer and he reasonably relied upon, and was induced by, Larson's representations to the contrary to accept Groover-Hoffman's offer.

28. On December 10, 1979, a mutual rescission of the Groover-Hoffman earnest money agreement was signed by the parties, and Groover-Hoffman's earnest money deposit was returned. The rescission and the deposit were accepted by Groover-Hoffman.

29. On November 23, 1979, a second earnest money receipt and offer to purchase was submitted to Doran Hunt by Larson on behalf of the Carlyle Group.

30. The Carlyle Group's earnest money receipt and offer to purchase offered a total purchase price of \$3,100,000.00 with

\$500,000.00 down and the balance amortized on a 25-year contract bearing a 10% interest for the first two years and 12% thereafter.

31. The Carlyle Group's offer was substantially less favorable to Hunt Development Company than the price and terms set forth in the Sales Proposal.

32. On November 28, 1979, Doran Hunt on behalf of Hunt Development Company, rejected the Carlyle Group's offer and submitted a counter-offer which restated the price and terms set forth in the Sales Proposal and which, by its own terms, expired 10 days from November 28, 1979.

33. The Carlyle Group did not accept Hunt Development Company's counter-offer.

34. Larson and Barnum-Broadbent did not produce a ready, willing and able purchaser to Hunt Development Company for the purchase of the Park.

35. On February 5, 1980, Barnum-Broadbent's attorney, David S. Dolowitz, sent a letter to Doran Hunt's attorney, Alan K. Jeppesen, wherein Mr. Dolowitz informed Mr. Jeppesen that if Hunt Development Company did not accept an attached offer by the Carlyle Group--which offered a price and terms substantially less favorable than the price and terms set forth in the Sales

Proposal--a lawsuit would be filed by Barnum-Broadbent seeking a commission.

36. Doran Hunt did not accept the second offer submitted on behalf of the Carlyle Group by David S. Dolowitz.

37. On March 3, 1980, Barnum-Broadbent was informed through David S. Dolowitz that the Park had been sold to another buyer.

38. Hunt Development Company paid a full 3% broker's commission on the eventual sale of the Park.

39. This action was filed on May 27, 1980.

40. Between May 27, 1980 and September 30, 1982, this action remained dormant.

41. Hunt Development Corporation was forced to expend \$16,095.00 in attorneys' fees to defend this action, wherein Barnum-Broadbent seeks a commission based upon Hunt Development Company's rescission of the Groover-Hoffman earnest money agreement and rejection of the Carlyle Group's offer.

42. On September 30, 1982, defendants moved the Court for an Order dismissing the action based upon plaintiff's failure to prosecute for over two years.

43. On November 8, 1982, defendant's Motion to Dismiss was granted. Barnum-Broadbent was promptly informed of the dis-

missal by its counsel, David S. Dolowitz.

44. On July 17, 1983, Doran Hunt died.

45. On September 19, 1983, plaintiffs moved the Court for an order vacating the dismissal of this action based upon plaintiffs' contention that both Barnum-Broadbent and Larson were precluded from prosecuting the action based upon Section 362(a) of the Bankruptcy Code, which also precluded the Court from dismissing the action for failure to prosecute. Barnum-Broadbent has never filed a bankruptcy petition.

46. Larson had filed a bankruptcy petition with the United States Bankruptcy Court for the District of Utah in 1981. The potential commission was listed as an asset in this bankruptcy.

47. On August 20, 1982, Ross Broadbent, a partner of Barnum-Broadbent had filed an individual Chapter 11 Petition for Bankruptcy; this Petition was dismissed by the Bankruptcy Court on May 24, 1983. The potential commission was listed as an asset in this bankruptcy.

48. Doran Hunt failed to keep appointments with Groover-Hoffman, Inc. Notwithstanding Mr. Hunt's failure to keep such appointments, the sale of the Park to Groover-Hoffman, Inc. would

have failed because Groover-Hoffman, Inc. was not a good and capable buyer.

CONCLUSIONS OF LAW

1. Larson and Barnum-Broadbent owed a fiduciary duty to Hunt Development Company in connection with the sale of the Park.

2. The intent of both Larson, acting on behalf of Barnum-Broadbent, and Doran Hunt, acting as President of Hunt Development Company, when they entered into the Listing Agreement was that a commission would not be paid unless and until the sale of the Park was closed with a purchaser produced by Larson or Barnum-Broadbent.

3. The Park was not sold to a purchaser produced by either Larson or Barnum-Broadbent nor did Larson or Barnum-Broadbent produce a purchaser who was ready, willing or able to buy the Park.

4. Larson and Barnum-Broadbent negligently misrepresented Groover-Hoffman's financial ability to Doran Hunt.

5. Larson and Barnum-Broadbent breached their fiduciary duty to Hunt Development Company.

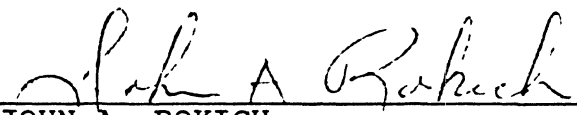
6. Larson and Barnum-Broadbent did not fulfill their obligations under the Listing Agreement.

7. Defendants are not liable to Larson or Barnum-Broadbent for a real estate commission and are entitled to judgment in their favor and against plaintiffs, no cause of action as to plaintiff's Complaint.

8. Defendant's counterclaim against the plaintiff and plaintiff-in-intervention is dismissed, no cause of action.

9. Defendants are awarded their costs.

DATED this 14 day of July, 1986.



JOHN A. ROKICH
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the
above and foregoing Findings of Fact and Conclusions of Law was
mailed, postage prepaid this 25th day of June, 1986, to:

Douglas F. White, Esq.
185 North Main, Suite B-1
Tooele, Utah 84047

David K. Smith, Esq.
Suite C-274, Cedar Park
5284 South 320 West
Salt Lake City, Utah 84107

A handwritten signature in dark ink, appearing to read "David K. Smith", is written over a horizontal line.

DAVID R. OLSEN, ESQ., #2458
CHARLES P. SAMPSON, ESQ., #4658
of and for
SUITTER AXLAND ARMSTRONG & HANSON
700 Clark Leaming Office Center
175 South West Temple
Salt Lake City, Utah 84101-1480

IN THE THIRD JUDICIAL DISTRICT COURT OF TOOELE COUNTY

STATE OF UTAH

BARNUM-BROADBENT REAL)	
ESTATE COMPANY,)	
a dissolved partnership,)	
)	
Plaintiff,)	
)	
vs.)	
)	
THE ESTATE OF DORAN HUNT,)	
by and through its Co-)	
Personal Representatives,)	
DORAN RAY HUNT and JOAN)	
HUNT RALSTON, and HUNT)	
DEVELOPMENT COMPANY,)	
)	
Defendants.)	

GARY LARSON,)	
)	
Plaintiff-in)	
Intervention,)	
)	
vs.)	
)	
BARNUM-BROADBENT REAL ESTATE)	
COMPANY, a dissolved partner-)	
ship)	
)	
Defendant.)	

O R D E R

Civil No. 1-80-0452
HONORABLE JOHN A. ROKICH

Plaintiff's and plaintiff-in-intervention's objections
to defendants' proposed Findings of Fact and Conclusions of Law came
on regularly before the above-entitled Court on Monday, June 9,

00502

TOC:

STATE OF UTAH

00509

1986, the Honorable John A. Rokich presiding. Plaintiff was represented by David K. Smith, Esq. and plaintiff-in-intervention was present and represented by Douglas F. White, Esq. Defendants were represented by David R. Olsen, Esq. and Charles P. Sampson, Esq. of and for Suttter Axland Armstrong & Hanson. Having heard the arguments of counsel, the Court hereby

ORDERS, ADJUDGES AND DECREES as follows:

1. Paragraph 12 of the Findings of Fact is amended to substitute the phrase "proven not to be true" for the word "false" at the end of the Finding.

2. The objections to paragraph 14, 16, 18 and 24 of the proposed Findings of Fact are overruled.

3. The objections to paragraph 25 of the proposed Findings of Fact are sustained and the words "fraudulently and" are deleted from said Finding.

4. Paragraph 28 of the proposed Findings of Fact is amended to read as follows:

On December 10, 1979, a mutual rescission of the earnest money agreement was signed by the parties, and Groover-Hoffman's earnest money deposit was returned. The rescission and the deposit were accepted by Groover-Hoffman.

5. The objections to paragraph 34 of the proposed Findings of Fact are overruled.

6. The objections to paragraph 42 of the proposed Findings of Fact are sustained and paragraph 42 is stricken.

7. Paragraphs 47 and 48 of the proposed Findings of Fact are amended to include a finding that the potential commission was listed as an asset in both the Larson and Broadbent bankruptcies.

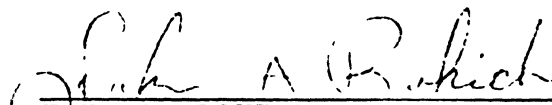
8. The objections to paragraph 49 of the proposed Findings of Fact are granted and paragraph 49 is stricken.

9. Plaintiff and plaintiff-in-intervention's Motion to add an additional Finding of Fact is granted and the additional Finding reads as follows:

Doran Hunt failed to keep appointments with Groover-Hoffman, Inc. Notwithstanding Mr. Hunt's failure to keep such appointments the sale of the Park to Groover-Hoffman, Inc., would have failed because Groover-Hoffman, Inc. was not a good and capable buyer.

DATED this 14 day of ^{July}~~June~~, 1986.

BY THE COURT:



JOHN A. ROKICH
DISTRICT JUDGE

Larson, was represented by Douglas F. White, Esq. Defendants were represented by David R. Olsen, Esq. and Charles P. Sampson of and for Suitter Axland Armstrong & Hanson. The Court, having heard the testimony of the witnesses, reviewed the documentary evidence, heard the arguments of counsel and having made and entered its Findings of Fact and Conclusions of Law, hereby

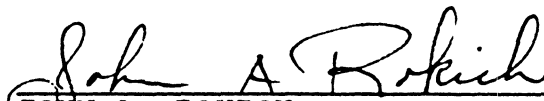
ORDERS, ADJUDGES AND DECREES

1. That judgment is entered in favor of defendants and against the plaintiff and plaintiff-in-intervention on plaintiff's Complaint, no cause of action;

2. That judgment be entered in favor of the plaintiff and plaintiff-in-intervention and against the defendants on defendants' counterclaim, no cause of action;

3. That defendants be awarded their costs incurred in defending this action.

DATED this 14 day of ^{July} ~~June~~, 1986.


JOHN A. ROKICH,
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the
above and foregoing Judgment was mailed, postage prepaid this
17th day of April, 1986, to:

Douglas F. White
185 North Main, Suite B-1
Tooele, Utah 84074

David K. Smith, Esq.
Suite C-274 Cedar Park
5284 South 320 West
Salt Lake City, Utah 84107

Debbie Barker

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the
above and foregoing Order was mailed, postage prepaid this _____
day of June, 1986, to:

Douglas F. White, Esq.
185 North Main, Suite B-1
Tooele, Utah 84047

David K. Smith, Esq.
Suite C-274, Cedar Park
5284 South 320 West
Salt Lake City, Utah 84107

DAVID R. OLSEN, Esq. #2458
CHARLES P. SAMPSON, Esq. #4658
of and for
SUITTER AXLAND ARMSTRONG & HANSON
Attorneys for Defendants
700 Clark Leaming Office Center
175 South West Temple
Salt Lake City, Utah 84101-1480
Telephone: (801) 532-7300

IN THE THIRD JUDICIAL DISTRICT COURT FOR TOOELE COUNTY
STATE OF UTAH

**BARNUM-BROADBENT REAL
ESTATE COMPANY,
a dissolved partnership,**

Plaintiff,

VS.

THE ESTATE OF DORAN HUNT,
by and through its Co
Personal Representatives,
DORAN RAY HUNT and JOAN
HUNT RALSTON, and HUNT
DEVELOPMENT COMPANY,

Defendants.

GARY LARSON,

Plaintiff-In-
Intervention,

vs.

**BARNUM-BROADBENT REAL ESTATE
COMPANY, a dissolved partner-
ship,**

Defendant.

NOTICE OF ENTRY OF
JUDGMENT

Civil No. 80-0452

Judge John A. Rokich

PLEASE TAKE NOTICE that Judgment was entered on the 14th day of July, 1986, in the above-referenced action.

DATED this 30th day of September, 1986.



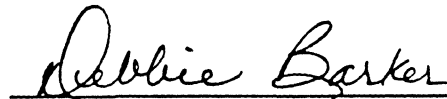
DAVID R. OLSEN, Esq.
CHARLES P. SAMPSON, Esq.
of and for
SUITTER AXLAND ARMSTRONG & HANSON
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a true and correct copy of the foregoing Notice of Entry of Judgment to be mailed this 30th day of September, 1986, postage prepaid, to:

Douglas F. White, Esq.
185 North Main #B-1
Tooele, Utah 84047

David K. Smith, Esq.
Suite C-274, Cedar Park
5284 South 320 West
Salt Lake City, Utah 84107



DAVID K. SMITH, ESQ.
State Bar No. 2993
Attorney for Plaintiff/Appellant
BARNHAM BROADBENT REAL ESTATE COMPANY
Suite 300
6925 Union Park Center
Midvale, Utah 84047
Telephone: 566-3373

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
TOOELE COUNTY, STATE OF UTAH

BARNHAM BROADBENT REAL)	
ESTATE COMPANY)	
)	
Plaintiff/Appellant,)	NOTICE OF APPEAL
vs.)	
)	Civil No. C-80-0452
DORAN HUNT, and HUNT)	
DEVELOPMENT COMPANY,)	Honorable John A. Rokich
Defendant/Respondent.)	

NOTICE OF APPEAL

COMES NOW the Plaintiff, BARNHAM BROADBENT REAL ESTATE COMPANY, and herewith appeals to the Utah State Supreme Court from a decision rendered by the Honorable John A. Rokich, signed by him on July 14, 1986 but not entered by the Clerk of the above Court until October 20, 1986, wherein he found in favor of the Defendants and against the Plaintiff, "No Cause of Action", on Plaintiff's claim for an earned real estate commission arising out of a signed Earnest Money and Offer to Purchase executed between the Seller, DORAN HUNT and/or HUNT DEVELOPMENT COMPANY, and the Buyer, LARRY GROOVER, for and in behalf of GROOVER-HOFFMAN, INC.

C0511

The Plaintiff/Appellant, BARHAM BROADENT REAL ESTATE COMPANY, appeals the decision of Judge John A. Rokich, and affirmatively asserts that the District Court was bound to recognize the signed Earnest Money and Offer to Purchase dated November 9, 1979 as binding upon the parties, and that as a result the Plaintiff, acting as broker, had earned a 3% real estate commission, pursuant to a signed listing agreement dated November 2, 1979.

DATED this 10th day of November, 1986.



DAVID K. SMITH, ESQ.
Attorney for Appellant/Respondent
Suite 300
6925 Union Park Center
Midvale, Utah 84047
Telephone: 566-3373

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Notice of Appeal to the Counsel for the Defendants this 10th day of November, 1986 at the address given below:

DAVID R. OLSEN, ESQ.
CHARLES P. SAMPSON, ESQ.
SUITTER, AXLAND, ARMSTRONG & HANSON
Attorneys at Law
Seventh Floor
Clark Leaming Office Center
175 South West Temple
Salt Lake City, Utah 84101



DAVID K. SMITH, ESQ.

00560